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CURRENT TOPICS

Shackling Leviathan

SOME observations made by Mr. MICHAEL ROWE, Q.C., in addressing the Royal Institution of Chartered Surveyors, pinpoint another cause for dissatisfaction with the present state of administrative law in this country. Mr. Rowe is reported as saying that until recently it was unusual for departmental representatives to give evidence at public inquiries. There were indications that the iniquity of this rule was appreciated, but the speaker's forthright opinion was that the process of recognition of the individual's rights "would not be complete until the right of the individual to know what he was up against and to test it by evidence and cross-examination was acknowledged fully and freely in all forms of proceedings." That such facilities should be open to the subject whenever his legitimate interests come into conflict with the plans of the executive is one of the chief aims of those who are now seeking to reform the law of administrative tribunals. One remedy would be, as Professor H. W. R. WADE recently suggested (see p. 19, *ante*), the instruction of inferior tribunals, and officials too, in the best elements of the judicial technique. Other critics are pressing for the setting up of a special administrative court, or a separate Division of the High Court, with an appellate jurisdiction in matters of law over administrative decisions. The latter suggestion is far from new; it is part of a more comprehensive solution propounded so long ago as the autumn of 1947 in an essay by Mr. J. F. GARNER, LL.M., published in *Public Administration*. Having there reviewed the great variety of questions of an administrative nature which fall to be dealt with by the courts, including petty sessions and quarter sessions, by Ministers of the Crown acting in a judicial or quasi-judicial capacity and by such *ad hoc* bodies as the rent tribunals or the Income Tax Commissioners, Mr. Garner proposed not merely that a Court of Administrative Appeals should exercise appellate jurisdiction over these questions, but that the original jurisdiction should be vested in District Administrative Courts having a status equivalent to that of the county courts in which, in appropriate cases, specialist assessors should sit with the judge. Besides the advantages of a uniform procedure and a settled body of case law, some economy in manpower and accommodation might be expected from this system. Whether or not the current movement for reform results in a comprehensive inquiry into the problem, Mr. Garner's proposals deserve study as a means of restoring to the ordinary citizen his instinctive faith in the justice of English law.

Acquisition of Land: Division of Unexpended Balances

UNDER s. 31 of the Town and Country Planning Act, 1954, if compensation on a compulsory acquisition of land is based on the existing use of the land, there is to be added to the compensation any unexpended balance of established development value. Regulations now made under s. 31 (2), and coming into operation on 21st January—the Acquisition of Land (Division of Unexpended Balance) Regulations, 1955 (S.I. 1955 No. 80)—provide for the procedure to be adopted,

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where there are several interests in the land, for ascertaining for this purpose what portion of the balance is attributable to each interest. Where there is no dispute as to compensation, acquiring authorities are required to serve notice on persons interested in the land of their proposal to pay a portion of the balance to the person whose interest is being acquired. Persons so served may within thirty days make written objection to the proposal and, if such objections are not met or withdrawn, may give a "notice of dispute" to the Lands Tribunal and to the authority—that is to say, may appeal to the tribunal. Where compensation is disputed and the matter has been referred to the Lands Tribunal, the acquiring authority are similarly required to serve notice of their proposal on persons interested, who are thereupon entitled to become parties to the dispute as to compensation so far as it relates to the balance. In both types of case the Lands Tribunal have jurisdiction either to confirm or vary the acquiring authority's proposal. See also p. 68, *post*.

Landlords and the Housing Repairs and Rents Act

CONCERN is felt, according to a special correspondent of *The Times* (18th January), by the Minister of Housing and Local Government as to the future working of the Housing Repairs and Rents Act. Landlords, the writer states, are wondering whether they may not be putting themselves to too much trouble for too small recompense. The effect of income tax on the gross amount of repairs increase and the inability to finance the initial repairs necessary to qualify for the increase are having a deterrent effect. Landlords also find the Act complicated, and they do not like to risk alienating good tenants. Tenants, for their part, have not been backward in applying for certificates of disrepair, as the figures disclosed by local authorities have shown, and there is only "a trickle of revocations." The effect of a certificate of disrepair is that the landlord forgoes any increased rent he has claimed, and also, if his is a pre-1914 house, the 40 per cent. increase allowed by the Act of 1920. The effect of the Act up to the present seems to be the opposite of what was intended. Everybody, including the sanitary inspectors, has acted properly, and no one is to blame. Whether or not it is too early to say positively that the Act is "failing in its good intentions," it is by no means too early to discern a distinct trend in the opposite direction from that intended by those responsible for putting the Act on the statute book, and that as a result of the Act itself.

Evidence Obtained Unlawfully

THE reasons now given by their lordships in the Privy Council for their advice tendered last month in the case of *Kuruma* v. *R.* (noted at p. 73, *post*) may be said to amount to this, that in regard to the obtaining of evidence in a criminal case, with one important exception, the end justifies the means. The exception concerns, of course, an admission or confession by the accused person, which, it is settled beyond any dispute, may be admitted as part of the evidence for the prosecution against that person only if it is shown to have been made voluntarily and not by dint of any threat or under colour of any promise made by a person in authority. Their lordships made it plain that they were not qualifying in any degree whatsoever the rule with regard to confessions. But in regard to other forms of evidence, the sole test of admissibility was one of relevance. If the evidence was relevant to the matters in issue then it was admissible, and the court was not concerned with the legality or otherwise of the methods by which it had been obtained. Thus in the case before the Board it was objected that the appellant had in Kenya been searched by two junior police officers without a warrant, whereas by an Emergency Regulation only a police officer of the rank of assistant-inspector or above had the power of such search. But it was as a result of what was alleged to have been found in the course of the search that the appellant was charged, tried and sentenced. The Board assumed that the police officers in question had no power to make the search, but they nevertheless rejected the submission that this rendered inadmissible the evidence of what was found upon the appellant. The point before their lordships related, of course, strictly to the question whether the evidence was properly admitted. Other aspects of the situation will occur to the reader. Thus, LORD GODDARD, in delivering the opinion of the Board, referred to the discretion which in a criminal case the judge no doubt always had to disallow evidence if the strict rules of admissibility would operate unfairly against an accused—if, for instance, a document had been obtained from a defendant by a trick. Again there may in some cases be a question of civil proceedings for trespass or detinue. But under that head one needs to consider *Elias* v. *Pasmore* [1934] 2 K.B. 164, in which Horridge, J., held that, though the original seizure of certain documents by police officers was unlawful, it was to be excused on the ground that the State had an interest in preserving the material evidence of a crime.

The High Court of Chivalry

MANUFACTURERS of tobacco jars, teapots, ashtrays and other articles decorated with coats of arms, as well as innkeepers who have long used noblemen's arms on their signs, should be grateful to the Surrogate (LORD GODDARD) of the High Court of Chivalry, for his learned and lucid judgment in *Manchester Corporation* v. *Manchester Palace of Varieties, Ltd.* (*The Times*, 22nd January). He absolved such persons from the possibility of intervention against them by the court, quoting from Bacon's *Essay on Judicature*: "Penal laws, if they have been sleepers of long time or if they be grown unfit for present use, should be by wise judges confined in the execution." The present case, in which the defendants had used the arms of the City of Manchester as their common seal, was one in which the court might properly inhibit and enjoin the defendants from any display of the corporation's arms. The Surrogate made the suggestion that it should be laid down as a rule of court that leave must be obtained before any proceedings are instituted, so as to prevent frivolous proceedings. Should there be any indication of a considerable desire to institute proceedings he was firmly of opinion that the court should be put upon a statutory basis, defining its jurisdiction and the sanctions it could impose. One of the most interesting passages in his judgment dealt with the origin of the court as a military tribunal, the forerunner of courts-martial. It was commonly believed that armorial bearings were originally meant to identify knights in armour, and it was therefore natural that the court should try disputes with regard to the right to bear arms. His lordship also decided that that right was a dignity and not a property right which the ordinary courts of law could protect. With Lord Goddard sat the Earl Marshal (the DUKE OF NORFOLK), who is head and visitor of the College of Arms, incorporated, as Lord Goddard said, in the reign of Philip and Mary to take over the delegated power of granting armorial bearings. The court had not sat since 1751, but it would have been most unfortunate for the plaintiffs, whose rights had been invaded, if it had been successfully contended that the court was no longer known to the law. In legal as in other spheres of interest, one must be very careful what one discards, whatever its age.

THE TOWN AND COUNTRY PLANNING ACT, 1954: REGULATIONS

THE Minister of Housing and Local Government has now made six sets of regulations under the Town and Country Planning Act, 1954, in addition to the Town and Country Planning Act, 1954 (Appointed Day), Order, 1954 (S.I. 1954 No. 1598).

The six sets are :—

(1) The Central Land Board Payments Regulations, 1954 (S.I. 1954 No. 1599).

(2) The Town and Country Planning (Compensation) Regulations, 1954 (S.I. 1954 No. 1600).

(3) The Town and Country Planning (Minerals) Regulations, 1954 (S.I. 1954 No. 1706).

(4) The Central Land Board (Provision of Information) Regulations, 1954 (S.I. 1954 No. 1720).

(5) The Town and Country Planning (Mortgages, Rentcharges, etc.) Regulations, 1955 (S.I. 1955 No. 38).

(6) The Acquisition of Land (Division of Unexpended Balance) Regulations, 1955 (S.I. 1955 No. 80).

The first two sets of regulations, which prescribe the procedures for claiming payments from the Central Land Board under Pt. I and compensation from the Minister under Pts. II and V of the 1954 Act respectively, have already been described in an article at 98 SOL. J. 859. It suffices to say here that (1) applications to the Board, to be made on a form obtainable from any of their regional offices, must be returned completed to them on or before the 30th April next ; (2) applications to the Minister under Pt. V in respect of planning restrictions imposed before 1st January, 1955, to be made on a form obtainable from local authorities' offices, must be returned completed to the Minister on or before 30th June next ; (3) applications under Pt. II in respect of planning restrictions imposed on or after 1st January, 1955, must be made, on the same form as for Pt. V, to the Minister within six months after the relative decision. In each case there is power vested in the Board and the Minister respectively to extend these periods in particular cases.

The 1954 Minerals Regulations are the longest of the six sets, and their subject matter is not of sufficiently general interest to warrant detailed consideration here. Part I of the Regulations revokes the Minerals Regulations of 1948, 1949 and 1953, made under the 1947 Act. Part II re-enacts such of these as are still required with minor amendments ; these re-enacted and amended regulations adapt and modify in relation to minerals certain of the provisions of the 1947 Act. Part III adapts and modifies in relation to minerals certain of the provisions of the 1954 Act. Of these latter adaptations and modifications, two may be of interest here, namely, (1) a provision (reg. 13) that where the freehold interest in the minerals has become severed from the freehold interest in the remainder of the land, i.e., where the surface land and the minerals below are in separate freehold ownership, any relevant claim holding and unexpended balance shall be apportioned between the two and shall remain separate, and (2) a provision (reg. 22) conferring upon a prospective mining lessee the same benefit that s. 33 of the 1954 Act confers on prospective purchasers of land.

Section 33 of the 1954 Act is the one which gives financial protection to a prospective purchaser who applies for a notice from the local authority as to whether or not they or any public authority possessing compulsory powers intend to acquire the land concerned within the next five years, obtains a negative reply and otherwise complies with the section. No regulation prescribes the form of application under s. 33, but a form, Con. 28c, on which application may be made, is obtainable from the Solicitors' Law Stationery Society, Ltd.

The 1954 Provision of Information Regulations prescribe the form of application to the Central Land Board for a certificate under s. 48 (1) of the 1954 Act as to the original amount of an unexpended balance of established development value, and also the form of certificate. Further, they prescribe the form of application by a local authority for a certificate under subs. (2) of this section. The form of application under s. 48 (1) is obtainable, together with an explanatory leaflet, from regional offices of the Central Land Board or from district valuers. The regulations provide that applications shall be sent to the district valuer for the area concerned, and that a separate application shall be made for each parcel of land in separate occupation or separately rated, except where required for two or more contiguous parcels of land by a person entitled to an interest in it or for the purposes of a transaction relating to it. The fee of 5s. payable on application is to be paid by adhesive postage stamps, unless the further fee of 15s., where a new apportionment is required, is paid at the same time, when the combined fee of £1 may be paid by cheque or money or postal order.

The 1955 Mortgages, etc., Regulations are only slightly shorter than the Minerals Regulations, but are of much wider interest. They are made under s. 66 of the 1954 Act, and give protection to mortgagees, rent-charge owners and settlement trustees in connection with claims under Pts. I, II and V of that Act.

(1) *Mortgages*

The 1954 Act gives direct protection to mortgagees in two types of cases, namely, in the case of claims under Pts. I and V, where not only was the land mortgaged to the mortgagee but the relevant claim on the old £300m. fund was also assigned to him. Where this took place, the mortgagee is the claim-holder and he, not the mortgagor, is the person entitled to claim under these two Parts, by virtue of s. 9 in the case of Pt. I claims, and s. 43 (2) in the case of Pt. V claims. Regulation 5 provides that he shall apply whatever he may receive in response to his claim as if it were proceeds of sale arising from a sale of the land by him under his powers of sale on the date when his claim is paid out. The interest of the mortgagor, and of any other interested person, is thus looked after.

Where the mortgagee is not the claim-holder, any claim under Pt. I or Pt. V will have to be made by the mortgagor. In all claims under Pt. II the mortgagor will be the claimant. In these cases the mortgagee must look to the regulations for protection. But the regulations give no protection where the mortgage was created between 1st July, 1948, and 31st December, 1954, inclusive. Presumably if a mortgagee lent money on or after 1st July, 1948, when the financial provisions of the 1947 Act came into force, in excess of the existing use value of the land, without taking an assignment of the £300m. fund claim, he has only himself to blame for lending on an insufficient security, and is not entitled to be afforded protection. He must rely on any personal covenant by the mortgagor in the mortgage deed if he is to receive any of the claim moneys.

Regulation 3, however, provides protection in the case of Pt. I claims where the mortgagor is the claimant and the mortgage was created before 1st July, 1948. The Central

Land Board are to give notice of receipt of the mortgagor's claim to any mortgagee of whose interest they are aware from their records or the claim. The mortgagee then has thirty days within which he may notify the Board that the moneys secured by the mortgage have not been paid in full or charged exclusively on other land; he must also say whether any other mortgagee has priority. The Board will then pay the principal amount of the Pt. I payment and interest to the mortgagee having priority, who will have to account for it as proceeds of sale. If the mortgagor fails to make a claim on or before 30th April next, or within such extended period as the Board may allow, the mortgagee may himself make the claim (reg. 3 (4)).

Regulation 4 confers protection on similar lines in respect of Pt. II and Pt. V claims with the substitution of the Minister for the Board and the appropriate date for 30th April, but, in the case of a mortgage created on or after 1st January, 1955, its application is subject to anything to the contrary in the mortgage.

For the purpose of both reg. 3 and reg. 4, so far as it concerns Pt. V claims, it does not matter, provided that the mortgage was created before 1st January, 1948, that the land concerned has ceased before the date of the claim to be subject to the mortgage, e.g., it may have been sold by the mortgagee under his power of sale. If any money remains owing to the mortgagee he will enjoy the protection of those regulations.

(2) *Rent-charges*

Regulation 7 confers on rent-charge owners protection in respect of claims under Pts. II and V of the 1954 Act similar to that conferred on mortgagees by reg. 4, but, instead of merely giving notice to the Minister of a mortgage, they have to submit a rent-charge claim. No form of claim is prescribed but the details to be given are set out in reg. 7 (3). Regulation 8 and the Schedule to the Regulations regulate what amount, if any, should be paid to the rent-charge owner, and reg. 9 gives a right of appeal against the Minister's determination of this to the rent-charge owner and to the person who has made the Pt. II or V claim. If the person entitled to make the Pt. II or V claim fails to make it within the appropriate period then, like the mortgagee, the rent-charge owner may himself make the claim.

(3) *Settlements*

Regulation 10 provides that where land is the subject of a settlement the persons who are to be entitled to make the claim under Pt. I, II or V of the 1954 Act are the settlement trustees, and the moneys payable, including in the case of Pt. I and Pt. V claims the interest as well as the principal, are to be paid to them.

The sixth and last set of regulations, the 1955 Division of Unexpended Balance Regulations, relate to s. 31 of the 1954 Act. This is the section which requires an acquiring authority, in the case of a compulsory acquisition of land, to pay, in addition to the existing use value of the land, the amount of any unexpended balance of established development value attached to it. Where there is only one interest subsisting then the whole balance goes to the owner of that interest, but where there is more than one interest (not counting tenants for a year or less or from year to year) the balance has to be divided between the owners of the various interests in accordance with the Fifth Schedule to the Act, though the authority will only pay the part or parts attributable to the interest or interests they are acquiring. Regulation 3 requires the acquiring authority to notify to the various interested persons, other than any person whose interest they are acquiring, their proposals for the division of the balance. Any person aggrieved by the proposal then has thirty days in which to object to the authority. Within the thirty days following the expiration of the first thirty-days period the objector may give notice in writing to the authority and to the Lands Tribunal that he disputes the proposal. The matter then stands referred to the Tribunal, and the authority give notice of the fact to the other persons on whom notice of the proposal was served, who, if they wish, may become parties to the dispute (reg. 4).

Where the acquiring authority or the owner of the interest they are acquiring have themselves referred to the Lands Tribunal a question as to the application of s. 31, reg. 3 does not apply, but instead, reg. 5 requires the authority, if they propose to pay out any part of the balance, to give notice of the reference to the other interested persons, who may then become parties. If the authority do not propose to make such a payment, and therefore have not given notice, but the Tribunal thinks such a payment should be made, the Tribunal will direct the authority to give the notice.

R. N. D. H.

A Conveyancer's Diary

EQUITABLE ASPECT OF TENANCIES IN COMMON

A HOUSE is conveyed to *A*, but he and *B* provide the purchase money in shares. Both these occupy the house for a while, until they fall out, and *A* sues *B* for possession of the whole. What is the position of *B*, and what are his rights in the matter? According to the Court of Appeal in *Bull* v. *Bull* [1955] 2 W.L.R. 78 (also reported shortly at p. 60, *ante*), *A* and *B* are equitable tenants in common, and where there are two equitable tenants in common of realty then, until the realty is sold, each of them is entitled concurrently with the other to the possession of the land, and neither of them is entitled to turn out the other.

This is the conclusion which was reached by Denning, L.J., who gave the leading judgment in this case, and it is interesting to follow the steps by which this conclusion was reached. For this is largely virgin soil. Apart altogether from the provisions of the Law of Property Act, 1925, abolishing tenancies in common at law (and was it only at law?), as the learned lord justice observed at the beginning of his judgment in this case, though the mutual rights of tenants in common at law were well established, their mutual rights in equity had never been defined. At law, each tenant in common was entitled to the possession of the land (that would follow from the fact that he was regarded as tenant of the whole and of every part of the land, *per my et per tout*, as it used to be said). One tenant in common could not turn out another, and if one took more than his proper share in the course of enjoying the land, the other could bring an action for an account against him. Similarly, if one ousted the other, he was guilty of a trespass. (In making these observations on the rights of tenants in common, Denning, L.J., in his judgment uses the present tense: "Neither can turn out the other," etc. In view of the abolition of tenancies in common at law at any rate, it seems to me, with all respect, to be safer to use the past tense.)

These being the rights of legal tenants in common, Denning, L.J., concluded that the rights of equitable tenants in common were the same, save only for such differences as were necessarily consequent on the interest being equitable and not legal: "It is well known that equity follows the law; and it does so in these cases about tenants in common as in others." But the difficulty so far as the particular problems which arose in *Bull* v. *Bull* are concerned is that, as Denning, L.J., himself observed, there are no cases about equitable tenants in common to serve as a guide; and there is also the statutory abolition of tenancies in common in land to take into account. The real property lawyer may feel, after reading and pondering this decision, that neither of these difficulties was fully faced.

In support of this conclusion, Denning, L.J., cited a passage from the judgment of Sir Joseph Jekyll, M.R., in *Cowper* v. *Cowper* (1734), 2 P. Wms. 720, at p. 753, to the effect that the law is clear, and courts of equity ought to follow it in their judgments concerning titles to equitable estates; otherwise great uncertainty and confusion would ensue. In that case, the rules of descent applicable to legal estates in land were applied by analogy to determine the devolution of equitable interests in land, and no one could doubt that this was a most proper application to the circumstances of the maxim that equity follows the law. (The Horatian tag with which Sir Joseph Jekyll illustrated the *ratio* of this maxim is one of the neatest examples of apt quotation in the law reports.) Denning, L.J., then went on to refer to the statutory abolition of tenancies in common by s. 1 (6) of the Law of Property Act, 1925, and observed that all tenancies in common are now equitable and take effect behind a trust for sale, but, nevertheless, until a sale takes place, equitable tenants in common have, in his view, the same right to enjoy the land as legal tenants used to have. This proposition (which is the gist of the present decision) was then supported by a quotation from the judgment of Maugham, J., in *Re Warren* [1932] 1 Ch. 42, 47, in which that learned judge, after referring to the effect of the statute on owners of undivided shares in land and to the difference in the position of such an owner before and after the statute, went on as follows: "But in substance the beneficial interests of the undivided owners in regard to enjoyment so long as the land remains unsold have not been altered and it is true to say that the ordinary layman possessed of an undivided share in land would be quite unaware of any alteration in his rights as the result of the Act."

The decision in *Bull* v. *Bull* concerned rights in relation to land, and it is interesting to consider in somewhat greater detail than was there thought necessary the relevant provisions of the Law of Property Act, 1925. They are well known. Section 1 (6) provides that a legal estate is not capable of subsisting or of being created in an undivided share of land. This provision, which like s. 34 appears in Pt. I of the Act, which is entitled, "General principles as to legal estates, equitable interests and powers," certainly suggests that it was not concerned with the position of tenants in common in equity, which, on this footing, would continue to be regulated by the existing rules of equity, whatever they may be. Section 34, however, seems to go a little further. It provides by subs. (1) that an undivided share in land shall not be capable of being created except as provided by the Settled Land Act, 1925 (i.e., s. 36 of that Act), or as thereinafter in the Law of Property Act mentioned. This suggests that there are still methods open to a landowner of creating an undivided share in land, but this suggestion is fallacious, for what the Act in fact goes on to deal with is the result in law of (*a*) a conveyance, or (*b*) a testamentary gift of land to persons in undivided shares, and this result is, of course, that the land purported to be so conveyed or given is to be held upon the statutory trusts. These trusts are a trust for sale and other administrative trusts ancillary to the trust for sale, and "such trusts . . . as may be requisite for giving effect to the rights of the persons . . . interested in the land" (s. 35).

What are these rights? For the present purpose, there is an illuminating passage in the judgment of Russell, L.J., in *Re Kempthorne* [1930] 1 Ch. 268. (That was a case, as also was *Re Warren*, *supra*, in which the effect of the statutory conversion of land held in undivided shares into personalty under the transitional provisions on the rights of persons under a testamentary gift of a share in the land made in a will dated before 1926 had to be considered. Neither case is, therefore, on its facts, any guide to the problem which arose in *Bull* v. *Bull* but in both these cases the nature and effect of this statutory conversion had to be examined.) Russell, L.J., there said (p. 292) that reliance had been placed on these words at the end of s. 35: "interested in the land," and it had been said that by these words the statute showed that the former owner of an undivided share in freehold property was, notwithstanding the imperative trust for sale, still to remain interested in the land. "And, therefore, it was contended" (the learned lord justice went on) "that his property continued to be freehold property, and had not been changed into personal estate. I am unable to accept that view. There is no doubt that he is interested in the land; but his interest has ceased to be freehold property, and has become personal estate."

If that is the true effect of s. 35 (for the transitional provisions in question only applied the principles of that section to existing facts), then it would seem that in the circumstances to which s. 34 directly applies there cannot any longer be such a person as an equitable owner of an undivided share in land or equitable tenant in common of land; in such a case it would not, as Denning, L.J., said in his judgment in *Bull* v. *Bull*, be that "all tenancies in common are equitable only and they take effect behind a trust for sale," but rather that the only tenancies in common in relation to land which can now exist are tenancies in common of the proceeds of sale of the land, which are held on trust for the tenants in common as personalty in the proper proportions. In such a case, one of the beneficiaries (for that is all they are) could not normally sue in trespass another of the beneficiaries for interference with the trust property, the possession of which would be in the trustee; and if one of the beneficiaries were to obtain possession of it, he would have no better claim to it than any other. The normal remedy of one beneficiary against another in relation to use of the trust property in such a case as this would not be in trespass, which, depending as it does on possession, is full of difficulties where equitable interests in property are concerned, but execution of the trusts or an injunction, which are remedies wholly suitable to the assertion of equitable interests in property.

Now the case before the Court of Appeal in *Bull* v. *Bull* was not a case to which s. 34 applied, because the legal estate was vested in *A* and *A* alone, and it is perhaps questionable whether the assumption on which this decision proceeded, that *A* and *B* were equitable tenants in common of the property, was really justified. The typical cases of an equitable tenancy in common before 1926 were either where an equitable interest in property was limited in undivided shares, or where a legal estate in property was assured to persons in undivided shares by an instrument which failed for some reason to take effect at law but to which equity would give

effect so far as it could. The interest of *B* in the property in the second case would appear to have been more in the nature of an equitable charge, enforceable through the medium of a trust for sale, on principles similar to those applied in, for example, *Re Diplock* [1948] Ch. 465. If that is so, then it is submitted that the whole reasoning on which this decision is based must fall to the ground, although it may be that the actual decision can be upheld on some much narrower ground, such as that the attempted dispossession was equivalent to trespass. If not, then the position arises (and it is here that full discussion of the effect of s. 34 of the Law of Property Act, 1925, becomes so necessary) that whether two persons interested in land as, e.g., *A* and *B* were in the present case by reason of contribution by both to its purchase price, are equitable tenants in common of the land until sale, as distinct from the proceeds of the sale thereof after sale, would depend on whether the legal estate in the land is vested in one person and held by him on a resulting trust, or in two or more persons, so that s. 34 applied to subject it to the statutory trust for sale. That would be an odd result, although, of course, not on that account impossible, especially as there has been statutory interference with ancient rules of law and equity and the effect of such interference is often unpredictable, or, at any rate, unpredicted by its authors. "A B C"

Landlord and Tenant Notebook

CONTROL: AGREEMENT TO GIVE UP POSSESSION

THE decision in *Rajenback* v. *Mamon* [1955] 2 W.L.R. 21; *ante*, p. 29, while at first blush one to which we might be inclined to apply the epithet "startling," is essentially a reminder that rent control legislation is part of the law of procedure, achieving its aim by limiting remedies rather than substantive rights. The landlord of a controlled flat promised, in May, 1954, to pay his tenant a sum of money if the tenant gave up possession of the flat at or before the end of the year 1954; the landlord repudiated the agreement, and the tenant sued for a declaration. The defendant argued that the agreement was unenforceable, *inter alia*, for want of mutuality; and in support of this contention relied on *Barton* v. *Fincham* [1921] 2 K.B. 291 (C.A.).

The facts of the last-mentioned case were that a landlord paid a tenant of a controlled house a sum of money in consideration of her giving him notice to quit and promising to yield up the premises with vacant possession when it expired. She failed to carry out her promise and the landlord sued for possession, basing his claim on the agreement. He won in the county court; in the divisional court the two judges disagreed, the reason assigned by Lush, J., who was in favour of allowing the appeal, being that the agreement was against public policy. In the Court of Appeal a new point was canvassed: whether there was any jurisdiction to make an order for possession. And, examining the position, Bankes, L.J., and his colleagues showed that the Legislature, in reference to claims for possession, secured its object "by placing the fetter, not upon the landlord's action, but upon the action of the court." It was true that the Increase of Rent, etc., Restrictions Act, 1920, s. 15 (2), prohibiting the giving up of possession for valuable consideration, expressly excepted consideration given by the landlord, and thus "contemplated" agreements to surrender; but it was clear that s. 5, with its "No order or judgment for the recovery of possession . . . shall be made or given unless" (now s. 3 of and Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933), definitely declared that the court should exercise its jurisdiction only in the instances specified and in no others. Section 15 (2) was introduced to prevent the statutory tenant making a profit by taking money for letting some third person into possession; it seemed obviously necessary to exclude a landlord who might be willing to pay something to a tenant for vacant possession. No agreement could give the court a jurisdiction which the Legislature had said it was not to exercise.

This authority was distinguished in the recent case, Wynn Parry, J., pointing out that it merely gave effect to the limitation on the jurisdiction of the court when possession was being sought.

The defendant very likely considered the case one in which what was sauce for the goose was wrongly condemned when gander was served; but the learned judge observed that there were many cases in which Parliament had to some extent robbed contracts of mutuality. Indeed, in *Barton* v. *Fincham* itself, Bankes, L.J., said: "This is by no means the only statute in which the Legislature has secured the object it had in view by limiting the exercise by the courts of their full jurisdiction"; and readers, recalling that the law of procedure and that of evidence are both essentially concerned with remedies, may be reminded of the old metaphor: "The Statute of Frauds is a shield and not a sword." As Anson's *Law of Contract* puts it: "Such a contract [i.e., one not evidenced as required] is neither void nor voidable, but it cannot be enforced by action against a party who has not signed a memorandum because it is incapable of proof. On the other hand, a party who has not signed a memorandum can enforce the contract against one who has." Dispensing with mutuality is not an innovation made by rent control legislation.

The selection of this mode of securing its object, which contrasts with that adopted by the Agricultural Holdings Act, 1948, and Pt. II of the Landlord and Tenant Act, 1954, has had a number of consequences of different kinds. Thus, the right to take a point on appeal which has not been touched upon at first instance has been given several illustrations; *Selwyn* v. *Hamill* [1948] 1 All E.R. 70; 92 SOL. J. 71 (C.A.), in which a tenant against whom an order had been made on the "alternative accommodation" ground was allowed to urge on appeal that the accommodation, being rooms in two buildings, did not meet the requirements, is perhaps the most recent example. For an unexpected reference to the resulting position, one can refer to *Moses* v. *Lovegrove* [1952] 2 Q.B. 533 (C.A.), an action brought against a tenant who had held under an oral weekly tenancy at a time when the premises were not controlled, had at that time ceased paying rent, and had continued this masterly inactivity when the Rent, etc., Restrictions Act, 1939, brought the tenancy within its protection. He successfully laid claim to a "squatter's title," the court holding that the fact that the landlord might not have been able to turn him out did not prevent his possession being adverse. "By reason of the Act, the plaintiff could not eject him without an order of the county court, but that is merely a barrier in the way of the plaintiff's right of action for possession," was the way in which Romer, L.J., expressed the reasoning, using a somewhat different metaphor from that employed by Bankes, L.J., in *Barton* v. *Fincham*.

An alternative contention put forward by the defendant in *Rajenback* v. *Mamon* was that the agreement was against public policy; which contention appears to have been somewhat curtly rejected by the learned judge, who said that no authority had been cited to support it. As already mentioned, it was the basis of the judgment delivered by Lush, J., in the divisional court which heard the first appeal in *Barton* v. *Fincham*; but the reasoning is not reported, and whatever was said would be difficult to rely on in view of Bankes, L.J.'s observations on the object of s. 15 (2) of the 1920 Act. A recent event which would further militate against the argument is the enactment of the proviso to s. 17 of the Landlord and Tenant Act, 1954; the section prohibits contracting out of Pt. I (which extended rent control protection to long tenancies at low rents), but the proviso declares, "nothing in this Part of this Act shall be construed as preventing the surrender of a tenancy." Public policy has, we all know, been likened to an unruly horse; it may be that at one time a tenable argument could have been advanced for the defendant's proposition by reference to such judgments as that of Scrutton, L.J., in *Skinner* v. *Geary* [1931] 2 K.B. 546 (C.A.), in the course of which the learned lord justice said that one object of the Acts was to provide as many houses as possible at a moderate rent; but objections which have been urged to providing houses for sale rather than for letting cannot be said to be reflected in recent legislation.

R. B.

HERE AND THERE

LAW WITH A FLOURISH

LEGAL news at the moment is rather hard to comment on. It is true that there is on display in the Strand an example of that rare and interesting period piece the breach of promise action, but since it is still *sub judice* one must scrupulously respect the label "Do Not Touch," only sniffing from a distance that old fragrance of the nineteen-twenties and nineteen-thirties which it has evoked, for the story told in court goes back to the early A. P. Herbert period, which the current success at Wyndham's Theatre has re-created as neo Sandy Wilson. In that bright young past breach of promise actions were a commonplace. Never did the lawyers or the journalists who filled the fat, comfortably padded newspapers of those days imagine that human emotions would ever let the bitter waters of that sad but, after all, romantic stream dwindle to a mere trickle. It was the litigation of personalities, breach of promise and libel and slander in particular, which above all produced distinctive personalities at the Bar, with a touch of the actor, not inappropriate to the Garrick Club, but none the worse for that, because (and this is important) they made the litigant and the public feel that they were getting value for money. That is as significant as the better recognised principle that it is as important that justice should seem to be done as that it should be actually done. Without the flourish litigation is about as inspiring to those concerned as a bottle of National Health physic and comes to be looked at in much the same light, a mere prescription for an ailment, whereas a man with a whole and healthy mind should see it for what indeed it is, a work of art. Given half a chance, the public are always ready to enjoy a law suit, but the parties should enjoy it too, as the promoters enjoy a boxing match or the owners a horse-race. The idea of enjoying a thing for its own sake has receded from far too many human activities and it would be not only a dull thing but also a bad thing if the business of judging human problems ever became a mere matter of bored routine approximated, as far as possible, to an efficient conveyor-belt. If you present litigation as one of the major arts the patrons would no more grudge it, within their means, than the Popes grudged the decoration of the Sistine Chapel. The patrons would be as proud to be immortalised in the Law Reports as to fill a page in Burke. If the law is not enjoyed and appreciated it is because of some lack in the lawyers.

LURE OF THE BAR

FOR those who follow it, the law has always exercised something of the attraction of the theatrical profession. For the solicitors it is all stage management and production. The Bar, if they have any dramatic instinct, strut and fret their hour upon the stage. That hour on the stage draws young people into the Inns of Court with the same irresistible fascination that the limelight draws them to R.A.D.A. and its sister academies. Staying power varies. I do not know how many drama school pupils stay the course for ten years, but it has been reckoned that of those called to the Bar just after the war, only three in ten remain in practice, yet, supported by grants such as, their envious elders say, were never dreamt of formerly, the numbers taking the perilous road hardly seem to diminish, nor do they distinguish the whitened skulls of their unsuccessful predecessors littering the landscape from commonplace stones and boulders. That beautiful girls, the daughters of distinguished Queen's Counsel, should come to the Bar is as natural as that the shapely daughter of a ringmaster should become the star of the circus as an equestrienne or that yesterday's *jeune premier* of the West End should father to-day's starlet.

ASSORTED TALENTS

IT is those who come to the Bar with no such hereditary urge and altogether a different set of experiences behind them that excite our speculative curiosity. What future, what precise line of advance, shall one predict for the young man of twenty-five, a fly-weight champion, who, having fought in the boxing ring "from John o' Groats to Japan" is now starting to read law? "He used to play bagpipes on his way to the ring and had his own special brand of hell-for-leather fighting which intrigued the fight crowds." Other talents somewhat improbably combined in him are ventriloquism, painting and sculpture. He also owns a men's wear and barber shop. At least he will not start with the average young lawyer's initial handicap, utter innocence of the ways of the world and the practical machinery of life with which he will have to cope the minute he steps into even the humblest court, the humbler the more unfamiliar and confusing will be the ways of the denizens. But how he will employ his other talents is not altogether obvious. Painting and sculpture do not dovetail neatly with advocacy, if only because of the confined space in chambers. The habit of bagpipe playing is quite a different matter. It may be that there would be certain objections to the practice of playing oneself into court. (The objections would hardly be less strong if one delegated the function to one's clerk.) But on the other hand, despite the indignant anti-English propaganda of the Scottish Nationalists, the English have long had a marked weakness for everything Scottish and have even encouraged among the immigrants from the Northern Kingdom an enormous amount of what has been aptly called

"Whahaeing." The Bar Council, one feels, would hesitate a long time before it made an actual ruling that Scottish counsel might not pipe himself across the Strand. Ventriloquism, of course, is a far more dangerous gift for the advocate, since it is so readily adaptable to professional purposes. One's witness, if nervous or unreliable, need never speak at all in examination-in-chief. Counsel could conduct the whole dialogue. During cross-examination the most confusing interjections could be interpolated. Even pronouncements from the Bench could be given a subtle twist, while on suitable occasions considerable confusion could be produced in the jury box. Yes, the administration of justice could probably survive the pipes but not a practising ventriloquist. That talent at least must be buried. As for "hell for leather" fighting, that always gives the client a sense of value for money, even if it loses the case.

RICHARD ROE.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Incorporated Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

MALAYA: PRE-OCCUPATION DEBT: DISCHARGE BY PAYMENT IN OCCUPATION PERIOD

Firm of A.M.K.M.K. *v.* M.R.M. Periyanan Chettiar

Lord Oaksey, Lord Morton of Henryton and Lord Keith of Avonholm. 11th January, 1955

Appeal from the Malayan Court of Appeal.

The appellants and the respondent, both of whom were money-lenders carrying on business in Penang, had dealings between each other on current account, on terms that interest on the appropriate balances should be calculated and debited at the end of every six monthly period. On 15th February, 1942, at the beginning of the period of occupation by Japanese forces, $49,900 was owing on the account by the respondent to the appellants. They continued to operate the account during the occupation period (which ended on 5th September, 1945), and it was in effect closed on or about 6th August, 1945, there being then no balance due from the respondent to the appellants. By s. 8 of the Debtor and Creditor (Occupation Period) Ordinance, 1948, of the Federation of Malaya, it was provided, *inter alia*, that: "For the purposes of this Ordinance—(*a*) any payment made by, or on behalf of, any person into any bank or other account during the occupation period shall be deemed to have been applied first to any debit balance, or part thereof, which arose during the occupation period and was still outstanding against such person in such account at the time when such payment was made; . . ." In the action out of which this appeal arose the appellants claimed that, having regard to the provisions of s. 8 of the Ordinance, none of the payments made during the occupation period could be applied in or towards discharge of a pre-occupation debt, and that they were entitled to be paid by the respondent the pre-occupation debit balance of $49,900, with interest. The respondent pleaded that that sum had been paid off by reason of the appellants' drawings by 4th January, 1953, on which date the amount standing to the credit of the appellants was nil. The trial judge dismissed the action, and his decision was affirmed by the Court of Appeal for the Federation of Malaya. The appellants now appealed.

LORD MORTON OF HENRYTON, giving the judgment, said that it was common ground that the common law of England applied in the present case, except in so far as it was expressly varied by the terms of the Ordinance of 1948. By s. 8 of the Ordinance a payment made during the occupation period was to be deemed to have been applied, first, to any debit balance which arose during the occupation period. In order to give effect to the appellants' contention it would be necessary to read the word "first" as meaning "exclusively." In their lordships' view, that was an impossible construction. The word "first" implied that there was some other purpose to which a payment made during the occupation period might be applied. As there was no debit balance arising during the occupation period at the time when the first payment after the beginning of the occupation period was made by the respondent, s. 8 did not cover that case and there was nothing to prevent that payment being applied in accordance with the rule in *Clayton's* case (1816), 1 Mer. 572, 605, in reduction of the pre-occupation debt. Similarly, each subsequent payment by the respondent during the occupation period must be treated as having been applied, first, to any debit balance which arose during the occupation period and existed at the time of the payment, and, subject thereto, must be treated as having been applied in reduction of the pre-occupation debt of $49,900. Each payment applied in the latter manner was a "payment made during the occupation period . . . by a debtor . . . to a creditor . . . in respect of a pre-occupation debt" within s. 4 of the Ordinance, and was, therefore, "a valid discharge of such pre-occupation debt to the extent of the face value of such payment" by virtue of s. 4. By those means the pre-occupation debt of $49,900 was fully discharged by 4th January, 1943. Appeal dismissed.

APPEARANCES: *Phineas Quass*, Q.C., and *Dingle Foot*, Q.C. (*Barrow, Rogers & Nevill*); *Milner Holland*, Q.C., and *T. A. C. Burgess* (*Lawrance, Messer & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] [2 W.L.R. 213

CRIMINAL LAW: MURDER CHARGE: SELF DEFENCE: ONUS: PROVOCATION

Chan Kau *alias* Chan Kai *v.* R.

Lord Oaksey, Lord Tucker and Mr. L. M. D. de Silva 11th January, 1955

Appeal from the Supreme Court of Hong Kong.

At the trial of the appellant in the Supreme Court of Hong Kong on a charge of the murder of one Chan Fook, the case for the Crown was that, in the course of a street fight on 23rd July, 1953, between members of two rival gangs, the appellant seized a knife from a near-by bread stall and with it inflicted injuries on Chan Fook from which he died. The case for the defence was that Chan Fook grabbed the appellant, struck him, and thereafter pursued him and struck him on the back of the head with a wooden instrument, and that it was in the course of the pursuit that the appellant seized the knife and struck Chan Fook. The appellant was not a member of the gangs and he denied taking part in the attack. He said that he struck Chan Fook in self defence or, alternatively, under such provocation as would reduce the crime to manslaughter. He was found guilty of murder before Reece, J., and a jury on 23rd December, 1953, and was sentenced to death. His appeal was dismissed by the Supreme Court of Hong Kong in its appellate jurisdiction on 5th March, 1954. He now appealed from that decision by special leave *in forma pauperis*.

LORD TUCKER, giving on 11th January, 1955, their lordships' reasons for allowing the appeal on 25th November, 1954, said that the appellant submitted that the defence of provocation was wrongly withdrawn from the jury and that there was misdirection with regard to the defence of self defence. In cases where the evidence disclosed a possible defence of self defence, the onus remained throughout on the prosecution to establish that the accused was guilty of the crime of murder, and the onus was never on the accused to establish that defence any more than it was for him to establish provocation or any other defence apart from that of insanity. Since the decisions of the House of Lords in *Woolmington* v. *Director of Public Prosecutions* [1935] A.C. 462 and *Mancini* v. *Director of Public Prosecutions* [1942] A.C. 1, it was clear that the rule with regard to the onus of proof in cases of murder and manslaughter was of general application and permitted of no exceptions, save only in the case of insanity, which was not strictly a defence. It had been expressly so decided in the case of self defence in Scotland and Canada: *H.M. Advocate* v. *Doherty* [1954] S.L.T. 169 and *Latour* v. *R.* [1951] 1 D.L.R. 834. It was unfortunate that in Archbold's Criminal Practice, 33rd ed., p. 942, a passage was quoted from the summing up in *R.* v. *Smith* (1837), 8 C. & P. 160, where, dealing with self defence, it was said: "Before a person can avail himself of that defence he must satisfy the jury that the defence was necessary." That passage clearly needed some modification in the light of modern decisions. The trial judge in his summing up quoted the above-cited passage from *R.* v. *Smith*, *supra*, and added, "he, the accused, must satisfy you that the defence [of self defence] was necessary," with the result that the jury were not in fact adequately directed on that issue, which

they in fact found against the appellant. On a fair consideration of the whole proceedings, however, it could not be held, applying the test in *Teper* v. *R.* [1952] A.C. 480, that there was a probability that that misdirection turned the scale against the appellant. The evidence did establish, however, that there was a case with regard to the defence of provocation fit to be left to the jury, and that issue having in fact been expressly withdrawn from them by the judge, the verdict of guilty of murder could not stand and the case would be remitted to the Appellate Division of the Supreme Court of Hong Kong, with a direction to record a verdict of guilty of manslaughter and to pass sentence accordingly.

APPEARANCES: *Dingle Foot*, Q.C., and *Ingram Poole* (*Hy. S. L. Polak & Co.*); *D. A. Grant* (*Charles Russell & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] [2 W.L.R. 192

CRIMINAL LAW: EVIDENCE ILLEGALLY OBTAINED: TEST OF ADMISSIBILITY

Kuruma *v.* R.

Lord Goddard, C.J., Lord Oaksey and Mr. L. M. D. de Silva
11th January, 1955

Appeal from the East African Court of Appeal.

In this case the appellant was charged before an emergency assize court in Kenya of being in unlawful possession of ammunition—two rounds of ·303—contrary to reg. 8A (1) (*b*) of the Emergency Regulations, 1952. The ammunition was alleged to have been found on him when he was stopped and searched at a road block on 1st January, 1954, by a police constable, one Ogwang. He was convicted by the trial court on 11th February, 1954, and sentenced to death, and his appeal to the East African Court of Appeal was dismissed on 27th March, 1954. On this appeal the main ground of appeal was that the appellant had been searched by police constable Ogwang without a warrant, whereas, under reg. 29 of the Emergency Regulations, only a police officer of or above the rank of an assistant inspector had the power of search, and it was contended that evidence obtained in the course of and by means of an illegal search was inadmissible. The appellant had denied all along that he was carrying the ammunition.

LORD GODDARD, C.J., on 11th January, 1955, gave their lordships' reasons for the dismissal of the appeal on 8th December, 1954. The test to be applied in considering whether evidence was admissible was whether it was relevant to the matters in issue. If it was, it was admissible and the court was not concerned with how the evidence was obtained. While that proposition might not have been stated in so many words in any English case it was plainly right in principle, and was supported by *R.* v. *Leatham* (1861), 8 Cox C.C. 498; *Lloyd* v. *Mostyn* (1842), 10 M. & W. 478, and *Calcraft* v. *Guest* [1898] 1 Q.B. 759, and also by the Scottish cases of *Rattray* v. *Rattray* (1897), 25 R. 315; *Lawrie* v. *Muir* [1950] J.C. 19, and *Fairley* v. *Fishmongers of London* [1951] S.C. (J.) 14. And in *Olmstead* v. *United States* (1928), 277 U.S. 438, the Supreme Court of the United States of America were of opinion that the common law did not reject relevant evidence on the ground that it had been obtained by illegal means. There was no difference in principle for this purpose between a civil and a criminal case, though in the latter the judge always had a discretion to disallow evidence if the strict rules of admissibility would operate unfairly against an accused person: *Noor Mohamed* v. *R.* [1949] A.C. 182, 191–2; *Harris* v. *Director of Public Prosecutions* [1952] A.C. 694, 707. The board were not qualifying, in any degree whatsoever, the rule of law that a confession could only be admitted if it was voluntary, and one obtained by threats or promises held out by a person in authority was not to be admitted: *R.* v. *Thompson* [1893] 2 Q.B. 12. Their lordships had no doubt that the evidence to which objection had been taken was properly admitted. The ground upon which leave to appeal had been given, therefore, failed and they had humbly advised Her Majesty to dismiss the appeal. Their lordships indicated, when they announced their decision, that there were matters of fact in the case which caused them some uneasiness, though they did not consider that they were of a nature which, according to the settled practice of the board, would entitle them to tender other humble advice. But they thought it right to call them to the attention of the Secretary of State and, accordingly, they said no more about them.

APPEARANCES: *Dudley Collard* (*Gaster & Turner*); *D. A. Grant* (*Charles Russell & Co.*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law] [2 W.L.R. 223

COURT OF APPEAL

DETINUE: PROPERTY VESTED IN OWNER'S AGENT

Jarvis *v.* Williams

Evershed, M.R., Birkett and Romer, L.JJ.
14th December, 1954

Appeal from Tonbridge County Court.

In 1947 one Paterson ordered from the plaintiff, Jarvis, bathroom fittings at a price of £72 15s., and in January, 1948, he requested the plaintiff to deliver them to the defendant, Williams. In May, 1949, the goods had not been paid for and were still lying at the defendant's premises. In September, 1949, it was agreed between the plaintiff and Paterson that the plaintiff should take back the goods, collecting them from Williams at Paterson's expense. The plaintiff attempted to collect them from Williams, but he refused to deliver them up. In 1951 the plaintiff commenced proceedings in the High Court against Paterson, claiming £72 15s. for goods sold and delivered. He joined Williams as defendant, claiming against him in detinue for the return of the goods, and further or alternatively damages for detention of the goods. He then discontinued the proceedings against Paterson and brought the present proceedings against the defendant in the county court. The county court judge held that the plaintiff was entitled to recover against the defendant. The defendant appealed.

EVERSHED, M.R., said that, notwithstanding the agreement made in September, 1949, the property in the goods which had passed to Paterson in 1948 had remained vested in him. He was still liable to pay for them, and Jarvis could no doubt sue Paterson either for the price of the goods or for damages for breach of the arrangement when the defendant refused to deliver them over. But Jarvis could not sue Williams in detinue, for, as was stated in Halsbury's Laws of England, 2nd ed., vol. 33, at p. 62, para. 98: "In order to maintain an action of trover or detinue, a person must have the right of possession and a right of property in the goods at the time of the conversion or detention; and he cannot sue if he has parted with the property in the goods at the time of the alleged conversion . . ." See also the observation at p. 377 in *Rosenthal* v. *Alderton and Sons, Ltd.* [1946] K.B. 374.

BIRKETT and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCES: *G. B. M. Reed* (*Powell, Skues & Graham Smith*, for *T. E. Rodgers & Pembroke*, Bexhill); *J. H. S. Elliott* (*Simmons & Simmons*, for *Sprott & Sons*, Tunbridge Wells).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [1 W.L.R. 71

RATING: EXEMPTION: SCIENTIFIC SOCIETY

Institute of Fuel *v.* Morley (Valuation Officer) and St. Marylebone Metropolitan Borough Council

Evershed, M.R., Jenkins and Birkett, L.JJ.
15th December, 1954

Appeal by case stated from a decision of the Lands Tribunal.

The Institute of Fuel was incorporated by royal charter in 1946. Clause 7 of the charter provided that the purposes for which the institute was constituted were: "(*a*) To promote, foster, and develop the general advancement of the various branches of fuel technology as an end in itself, and as a means of furthering the more scientific and economic utilisation of fuel of all kinds for industrial, commercial, public, agricultural, domestic, transport and/or other purposes, and to promote, assist, finance and support such industrial and scientific research, investigation, and experimental work in the economical treatment and application of fuel as the institute may consider likely to conduce to those ends, and to the benefit of the community at large . . . (*d*) To uphold the status of members of the institute by holding or prescribing examinations for candidates for election and by requiring standards of knowledge and experience which can be approved . . ." The institute occupied premises in the metropolitan borough of St. Marylebone and claimed to be a body entitled to exemption from rates as being "instituted for purposes of science . . . exclusively" within s. 1 of the Scientific Societies Act, 1843. On appeal from the local valuation court for North-West London the Lands Tribunal held that it was not such a body and, accordingly, that it was not entitled to exemption. The institute appealed.

EVERSHED, M.R., said that for the purpose of s. 1 of the Act of 1843 the question whether a body was established exclusively for scientific purposes had to be determined, as was stated in *Metropolitan Borough of Battersea* v. *British Iron and Steel Research Association* [1949] 1 K.B. 434, by reference to the purposes of the society as defined in its charter, rather than by reference to the purposes actually pursued in practice. Under sub-para. (*d*) of cl. 7 of the institute's charter a distinct and avowed object of the institute was to establish and uphold the professional status of fuel technologists who should become members of the institute. In that respect the institute was unlike the professional bodies concerned in *Institution of Civil Engineers* v. *Inland Revenue Commissioners* [1932] 1 K.B. 149 and *Royal College of Surgeons of England* v. *National Provincial Bank, Ltd.* [1952] A.C. 631, where the enhancement of the professional status of the practitioners was not an object of the bodies concerned but a consequence of the single purpose of the body. The Institute of Fuel was instituted for purposes of science, but, having regard to the non-scientific purpose stated in sub-para. (*d*), it was not instituted exclusively for scientific purposes and was not, therefore, exempt from assessment to rates by virtue of s. 1 of the Act of 1843.

JENKINS, L.J., dissenting, said that the purpose expressed in sub-para. (*d*), though stated as a substantive object, was not in truth a substantive object but was merely ancillary to the scientific purposes of the institute.

BIRKETT, L.J., agreed with EVERSHED, M.R. Appeal dismissed. Leave to appeal.

APPEARANCES: *Michael Rowe*, Q.C., and *F. A. Amies* (*Philip Conway, Thomas & Co.*); *A. L. Lyall*, Q.C., and *Harold Brown* (*Sharpe, Pritchard & Co.*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 157

RENT RESTRICTION: LANDLORD BY PURCHASE: NEW TENANCY IN SAME PREMISES

Wright *v.* Walford

Evershed, M.R., Birkett and Romer, L.JJ.

16th December, 1954

Appeal from Gravesend County Court.

In January, 1952, the plaintiff, F. D. Wright, who was the sub-tenant of part of a house, 11 Darnley Street, Gravesend, within the Rent Restriction Acts, of which the defendant, A. Walford, was the tenant, purchased the freehold reversion. In July, 1952, the plaintiff as landlord served a notice to quit on the tenant but offered him as alternative accommodation that part of the house which he, the tenant, was actually occupying. The defendant surrendered the tenancy of the whole house, accepting a contractual tenancy of the alternative accommodation as from 29th September, 1952. In May, 1954, the plaintiff served on the defendant a notice to quit that accommodation, and later brought an action claiming possession on the ground that he required the accommodation for occupation by himself and members of his family, and offering a smaller part as alternative accommodation. The county court judge, having decided that the alternative accommodation was not reasonably suitable to the needs of the tenant and his family, dismissed the plaintiff's claim for possession, holding that he was disabled from obtaining possession on that ground because he had purchased the house after 1st September, 1939. The plaintiff appealed.

EVERSHED, M.R., said that the plaintiff, having become the tenant's landlord by purchasing the house in 1952, was disabled from obtaining possession by the words stated in parenthesis in paragraph (*h*) of the First Schedule to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933. Scott, L.J., in *Fowle* v. *Bell* [1947] K.B. 242, had interpreted that parenthesis, in relation to the facts before him, as referring to the landlord who had become landlord of the tenant before the court by purchasing the dwelling-house. *Littlechild* v. *Holt* [1950] 1 K.B. 1, 7 proceeded on the conclusion that a daughter of the tenant at the time of the purchase who on the tenant's death had remained in possession by virtue of s. 12 (1) (*g*) of the Rent Act of 1920 was to be regarded for the purpose of the words in parenthesis in the First Schedule to the Act of 1933 as being one and indivisible with the tenant and as such being protected. The observation of Denning, L.J., at p. 7, did not in his lordship's opinion seek to lay down a general principle, but should be limited to the particular facts of that case. In the present case the plaintiff became landlord by purchasing the dwelling-house; the relationship of landlord and tenant between him and the defendant was brought into existence by that purchase and had subsisted ever since. Although the character and incidents of the relationship had varied it would be against the plain sense and intention of the Schedule to hold that the protection afforded to the tenant was thereby defeated. His lordship added that the decision did, however, create an anomaly between the position of a tenant who accepted as alternative accommodation part of the premises which he was already occupying and one who moved to alternative accommodation offered by the landlord in another house.

BIRKETT and ROMER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *R. E. Megarry* (*Harold Tuffee & Son*, Gravesend); *G. Avgherinos* (*Hatten, Winnett & Holland*, Gravesend).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [2 W.L.R. 198

FACTORY: PROVISION OF GOGGLES: SCOPE OF DUTY OF EMPLOYERS

Daniels *v.* Ford Motor Co., Ltd.

Denning, Morris and Parker, L.JJ. 20th December, 1954

Appeal from Finnemore, J.

The Factories Act, 1937, provides by s. 49: "Protection of eyes in certain processes. In the case of any such process as may be specified by regulations of the Secretary of State, being a process which involves a special risk of injury to the eyes . . . suitable goggles or effective screens shall, in accordance with any directions given by the regulations, be provided to protect the eyes of persons employed in the process." The plaintiff, while engaged in the defendants' factory in fettling, a process specified by regulations under s. 49, was wearing goggles provided by the defendants and selected by himself out of a number of types available. The lenses having misted over, he pulled off the goggles sufficiently to insert his finger and thumb to clean the lenses, when a fragment of metal entered his right eye and caused injury. He claimed damages for breach of statutory duty. Finnemore, J., held that s. 49 imposed an absolute duty, so that the defendants, although they had given careful consideration to the problem of the provision of goggles, had failed to provide a perfect set which gave full protection, and were accordingly liable to the plaintiff in damages. The defendants appealed.

PARKER, L.J., said that the evidence and the findings of Finnemore, J., showed that no goggles were perfect in all respects, though the defendants had given much thought to the problem, and offered their workmen their own choice. Types which gave ventilation did not provide full protection. The type selected by the plaintiff and by most of the workmen lacked ventilation and tended to mist. The question was, whether the duty under s. 49 was absolute, as the judge had held. The words "suitable to protect the eyes" described the end to be achieved by the provision of the goggles, and were not to be read as equivalent to ensuring protection. In other words, while the obligation to provide suitable goggles was clearly absolute, there was no absolute obligation that the goggles so provided should ensure protection.

DENNING and MORRIS, L.JJ., agreed. Appeal allowed.

APPEARANCES: *F. W. Beney*, Q.C., and *B. Caulfield* (*A. E. Wyeth and Co.*); *R. M. Everett*, Q.C., and *D. P. Croom-Johnson* (*Pattinson and Brewer*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 76

PRACTICE: JUDGE'S ORDER NOT ENTERED: JURISDICTION TO RECALL ORDER

***In re* Harrison's Settlement; Harrison *v.* Harrison. *In re* Ropner's Settlement; Ropner *v.* Ropner**

Jenkins and Hodson, L.JJ., and Vaisey, J.

21st December, 1954

Interlocutory appeals from Roxburgh, J. ([1954] 3 W.L.R. 156; 98 SOL. J. 456).

Applications were made for approval by the court on behalf of infant, unborn and unascertained persons of schemes affecting family trusts. On 15th and 17th March, 1954, Roxburgh, J., in chambers, pronounced orders approving the schemes. On 25th March, 1954, the House of Lords gave its decision in *Chapman* v. *Chapman* [1954] A.C. 429 that a judge of the Chancery Division has no inherent jurisdiction, in the execution of the trusts of a settlement, to sanction, on behalf of infant beneficiaries and unborn persons, a rearrangement of the trusts of that settlement for no other purpose than to secure an adventitious benefit. At that date none of the orders in question

had been entered, and the judge directed the registrars concerned not to proceed further with them as he desired to hear further argument. The matter was adjourned into court, and all parties to the applications contended that the judge had no power to, or alternatively ought not to, recall the orders which he had pronounced. The judge varied the orders originally pronounced. The plaintiffs appealed.

JENKINS, L.J., reading the judgment of the court, said that at the adjourned hearing before Roxburgh, J., in court, the parties found it impossible to contend that the schemes could properly be sanctioned after the decision of the House of Lords in *Chapman* v. *Chapman, supra*, but they all joined in contending that the judge could not recall the orders made by him on 15th and 17th March, and that those orders should be perfected in the terms in which they were orally pronounced, as orders bearing the dates on which they were respectively so pronounced. It was submitted (1) that an order was made once and for all at the time when it was orally pronounced and could not thereafter be discharged or varied otherwise than on appeal; (2) that although a judge might have a limited discretionary power to vary an order orally pronounced, it was confined to cases of manifest error and omission; (3) that a judge should not vary an order between oral pronouncement and entry on his own initiative; (4) that if the judge had a discretion in the matter, it should not have been exercised as it was in the present cases; and (5) that there was no distinction for the purposes of the foregoing submissions between an order orally pronounced in chambers and one so pronounced in open court. The court were of opinion that an order pronounced by a judge could always be withdrawn or altered or modified by him until it was drawn up, passed or entered. In the meantime it was provisionally effective and could be treated as a subsisting order in cases where the justice of the case required it, and the right of withdrawal would not thereby be prevented or prejudiced. An order which could only be treated as operative at the expense of making it in effect irrevocable, as, e.g., an order for the payment of money, could not be treated as operative until it had been passed and entered. The authority mainly relied on by the appellants was the decision of Lord Westbury, L.C., in *In re Risca Coal and Iron Co.; ex parte Hookey* (1862), 4 De G. F. & J. 456, which, literally read, supported the appellants' contention that no order could be varied by the judge who pronounced it even before it had been passed and entered. The Lord Chancellor based his conclusion on the principle that an order took effect from the date of its pronouncement, and was at pains to point out that in an ideal system every order would be completed on the spot, but his judgment did not seem to involve the proposition contended for, namely, that after the words have passed his lips and before the order is perfected a judge who has in his belief delivered an erroneous judgment has no power to alter it. In later cases there were a number of *dicta* to the opposite effect and it had been held on many occasions that until an order made by a judge had been passed and entered there was no final order; it was now well settled that a judge might, at any time before the order was perfected, vary or alter the order which he had intended to make. It had been argued for the appellants that as the orders made by the judge originally were orders which, before the decision in *Chapman* v. *Chapman, supra*, could properly be made in accordance with the then existing authorities they should be allowed to stand, but that argument seemed to be based on the erroneous supposition that *Chapman* v. *Chapman, supra*, altered the law, whereas in truth that decision merely declared the law as it always was and showed it to have been theretofore misapprehended in the courts below. The law having been declared before Roxburgh, J.'s orders were perfected, in terms which clearly indicated that the orders ought not to have been made, and that decision having come to the judge's knowledge, it was right that he should recall the orders orally pronounced by him, notwithstanding the fact that at the time when they were announced they appeared to be correct according to the authorities as they then stood. When a judge had pronounced judgment he retained control over the case until the order giving effect to his judgment was formally completed. The control must be used in accordance with his discretion exercised judicially and not capriciously. The judge in the two present cases had exercised his discretion judicially in recalling his original orders and there was no ground for disturbing the orders formally made. The appeals must, therefore, be dismissed.

APPEARANCES: (first appeal) *Sir Hartley Shawcross*, Q.C., *Raymond Jennings*, Q.C., and *Lindsay Jopling*; *F. G. King* and *J. M. Price* (*Theodore Goddard & Co.*): (second appeal) *Sir Hartley Shawcross*, Q.C., and *D. A. Ziegler*; *B. S. Tatham* (*Tamplin, Joseph and Flux*, for *Darling, Heslop & Forster*, Darlington).

[Reported by PHILIP B. DURNFORD, Esq., Barrister-at-Law] **[2 W.L.R. 286**

CHANCERY DIVISION

DELIVERY OF MOTOR CAR REFUSED BY BUYER: MEASURE OF DAMAGES: "AVAILABLE MARKET"

Thompson (W. L.), Ltd. *v.* Robinson (Gunmakers), Ltd.

Upjohn, J. 14th December, 1954

Action.

The defendant company refused to accept delivery of a "Vanguard" motor car which they had contracted to buy from the plaintiffs, who were dealers in motor cars. The evidence was that the "Vanguard" motor car was readily available and that the retail selling price was fixed by the manufacturers. The plaintiffs mitigated their damage by returning the vehicle to their suppliers, who took it back, but the plaintiffs contended that they were nevertheless entitled to damages amounting to £61, the loss of profit on the repudiated sale. The defendants contended that the plaintiffs' loss was only nominal as there was an "available market" within the meaning of s. 50 (3) of the Sale of Goods Act, 1893, which must be taken to mean the whole conspectus and complex of the selling structure of the trade and of the whole purchasing public. By s. 50 of the Sale of Goods Act, 1893: "(1) Where the buyer wrongfully . . . refuses to accept and pay for goods, the seller may maintain an action against him for damages . . . (3) Where there is an available market for the goods in question the measure of damages is *prima facie* to be ascertained by the difference between the contract price and the market or current price. . . ."

UPJOHN, J., said that this action raised a question of some importance to the motor trade as to the true measure of damages where the buyer of a motor car, in this case a Standard "Vanguard," refused to complete his bargain and take delivery. The law was not in doubt; it was set out in s. 50 of the Sale of Goods Act, 1893, and the general principle which had been observed in all cases could be taken from the speech of Lord Haldane in *British Westinghouse Electric & Manufacturing Co., Ltd.* v. *Underground Electric Railways Company of London, Ltd.* [1912] A.C. 673, at p. 689. There was no authority exactly in point, but the principle to be applied was a clear one and to be found in *In re Vic Mill, Ltd.* [1913] 1 Ch. 465, where a purchaser repudiated his order and the supplier mitigated his damages by making slight alterations to the goods and selling the goods to a second purchaser in fulfilment of another order for similar goods. Buckley, L.J., said (at p. 474) that the suppliers were entitled to profits on both orders because they were not bound to give the first purchaser the benefit of another order. That case had been followed in exactly the circumstance of the present case in a number of cases abroad. He had been referred to *Cameron* v. *Campbell & Worthington, Ltd.* [1930] S.A.S.R. 402, and to other cases where the court came to a similar conclusion. The defendants' main case, however, was that s. 50 (3) of the Sale of Goods Act, 1893, applied, and that there was an "available market" within the meaning of that subsection. He (his lordship) was bound by the decision in the Court of Appeal in *Dunkirk Colliery Co.* v. *Lever* (1878), 9 Ch. D. 20, where it was held that "available market" meant a place where a seller could send his goods and expect to find there a purchaser, but on the facts of the case there was not an "available market" within the meaning of the subsection either on that interpretation or on the interpretation for which the defendants contended; the plaintiffs were, therefore, entitled to £61 damages for loss of profit.

APPEARANCES: *G. T. Aldous* and *D. C. Johnson-Davies* (*Osmond, Bard & Westbrook*); *J. F. Platts-Mills* (*Smith & Hudson*, for *Williamson, Stephenson & Hepton*, Hull).

[Reported by MRS. IRENE G. R. MOSES, Barrister-at-Law] **[2 W.L.R. 185**

LOCAL AUTHORITY: HOUSING: DIFFERENTIAL CHARGES ACCORDING TO TENANTS' MEANS: LEGALITY

Smith *v.* Cardiff Corporation (No. 2)

Danckwerts, J. 17th December, 1954

Action.

The Housing Act, 1936, provides by s. 83: "(1) The general management, regulation, and control of houses provided by a

local authority under this Part of this Act shall be vested in and exercised by the authority, and the authority may make such reasonable charges for the tenancy or occupation of the houses as they may determine." By s. 85 (as amended by Sched. I to the Housing Act, 1949): "(5) The authority may grant to any tenant such rebates from rent, subject to such terms and conditions, as they may think fit. (6) The authority shall from time to time review rents and make such changes, either of rents generally or of particular rents, and rebates (if any) as circumstances may require." In 1953, the Cardiff Corporation decided to introduce a differential rent scheme, which provided for additional charges above the basic rent payable by certain of the corporation's council house tenants, such charges being based on the income of the tenant, the earnings of his family and receipts from lodgers. An action was instituted by the tenants of several of the council houses for a declaration that the scheme was *ultra vires*. They alleged that it was not authorised by the powers conferred by the relevant statutes and that the statutes only authorised reasonable charges to be made to tenants; and that the defects of the scheme were such that the charges could not be considered reasonable.

DANCKWERTS, J., said that s. 85 (6) imposed a duty, whereas ss. 83 (1) and 85 (5) merely conferred powers. In *Belcher* v. *Reading Corporation* [1950] Ch. 380, Romer, J., dealing with the duty of a local housing authority, said that they must, as far as possible, maintain a balance between the council's tenants and the other ratepayers, the majority of whom were of comparable means, having regard to any specific requirements of the Housing Acts. It was established by *Leeds Corporation* v. *Jenkinson* [1935] 1 K.B. 168 that there might be discrimination between council tenants according to their means. It was admitted that if the corporation had put a flat rate increase on all their houses, and had given rebates according to the tenant's means, no objection could have been made, and it was contended that under s. 85 (5) rebates only were permissible. However that might be, it was under subs. (6) that the corporation had been acting. That required the corporation to review the rents from time to time, and on such review to make such changes as circumstances might require; nothing in the section confined the corporation's powers of discrimination merely to rebates. They could grade up or down the rents of particular tenants as circumstances might require, and such circumstances included the means of particular tenants. Accordingly, the method of surcharging certain tenants according to their means was not *ultra vires*, and was within the powers of the corporation. It was next contended that the charges were not reasonable as required by s. 83 (1). It was said that the scheme was for various reasons impracticable; that it was difficult to understand and construe in a number of instances, and that in actual practice the supposed means test did not produce a fair and reasonable result. Having regard to the obligations of the corporation under the Housing Acts, the principle of relating rents to the income of the tenants was not unreasonable. The scheme had produced difficulties, but the serious theoretical difficulties propounded by the plaintiffs had not been practically substantiated. There were certain hard cases, but it was probably beyond human ability to devise a scheme which did not lead to grievances. The imperfections in the scheme were not such that the court could say that the charges for rent were not reasonable, and therefore void under s. 83 (1). The plaintiffs, accordingly, failed under both heads. Judgment for the defendants.

APPEARANCES: *Kenneth Diplock*, Q.C., *Dingle Foot*, Q.C., *P. B. D. Ashbrooke* and *R. Millner* (*Wrentmore & Son*, for *Thos. John & Co.*, Cardiff); *E. Davies*, Q.C., and *D. Pennant* (*Theodore Goddard & Co.*, for *Sydney Tapper Jones*, Town Clerk, Cardiff).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [2 W.L.R. 126

MORTGAGE: LEASE: RELIEF AGAINST FORFEITURE OBTAINED BY MORTGAGEE: REDEMPTION ACTION BY MORTGAGOR

Chelsea Estates Investment Trust Co., Ltd. *v.* Marche and Others

Upjohn, J. 21st December, 1954

Action.

Possession of leasehold premises, subject to a mortgage by way of legal charge, was granted to the landlords for non-payment of rent. On application by the mortgagee in the landlord's action the court made an order granting the mortgagee relief against forfeiture under s. 146 (4) of the Law of Property Act, 1925, and ordered that the premises comprised in the lease should vest in the mortgagee "for all the residue of the term . . . granted by the said lease." The mortgagor, in an action for redemption of the mortgage, claimed that the term vested in the mortgagee was an assignment of the old term and was subject to the mortgage; alternatively, that if it were a new lease it was a substituted security and similarly subject to the mortgage. After the issue of the writ in the redemption action, the mortgagee had entered into a contract for the sale of the property, purporting to sell as absolute owner. The purchasers were joined subsequently as defendants.

UPJOHN, J., said that the question which he had to determine was, first, did the mortgagee hold the demised premises free from the mortgage or as a substituted security? If he held them free from the mortgage, *cadit quæstio*. If not, the question then arose: What were the rights and liabilities of the parties, having regard to the fact that the first defendant had entered into a contract of sale with the second, third and fourth defendants? One approached the construction of the order with this in mind, that the proper way of granting relief to an under-lessee was by way of new lease rather than underlease. The order was not happily expressed, and it was to be observed that nothing was said as to the terms on which the property was to be vested in the mortgagee, but the words "upon the terms and conditions of the lease" had to be implied. Approaching the order in that manner, it was reasonably clear that the order did not operate as an assignment, but operated as a grant of a lease expiring on 24th June, 2010, on the terms and conditions of the original lease. It seemed to him, therefore, that the first defendant had to be treated as holding under a lease created by the order. The question then was whether he held that new lease free from the mortgage or subject to it. Whichever way one looked at it certain anomalies, it seemed to him, necessarily arose. The matter should be looked at in this way: at common law if a lease were forfeited, that necessarily brought down with it all under-leases and much hardship to innocent persons was thereby caused; and it had been the practice of the Court of Chancery for many years to relieve against forfeiture for non-payment of rent, because the lease was looked upon as mere security for the payment of rent, and the Conveyancing Act, 1892, carried that principle further. Those statutory provisions were now embodied in s. 146 of the Law of Property Act, 1925. In principle, where the lessee defaulted and the under-lessee came forward, he did so to protect what in substance was his underlease. It was true that he got a new lease, but the whole essence of the matter was that he was to be protected in substance in respect of his underlease, as said by Vaughan Williams, L.J., in *Ewart* v. *Fryer* [1901] 1 Ch. 499. So here it seemed to him that the Legislature intended that the mortgagee should be protected, and protected by giving him a new lease, but it must necessarily be a lease substituted for the old; and, therefore, where there was a mortgagor, it must be a substituted security. Accordingly, the lease created by the order must be treated as subject to the mortgage. The mortgagee had purported to sell the property as absolute owner, and in the circumstances the mortgagor, who did not claim to restrain the mortgagee from proceeding with the sale, was entitled to an order for accounts and inquiries. Judgment for the plaintiffs accordingly.

APPEARANCES: *P. Ingress Bell*, Q.C., and *I. C. Duthie* (*Mark Lemon*); *Lionel Edwards*, Q.C., *J. L. Elson Rees* and *Ian Payne* (*Scadding & Bodkin*); *D. A. Thomas* (*Mark Lemon*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law] [2 W.L.R. 139

QUEEN'S BENCH DIVISION

ADOPTION: POWER OF COURT TO CORRECT PARTICULARS IN ADOPTION ORDER

R. *v.* Chelsea Juvenile Court; *in re* an Infant

Lord Goddard, C.J., Cassels and Devlin, JJ.

13th December, 1954

Application for an order of mandamus.

The Adoption Act, 1950, provides by s. 21 (1): "The court by which an adoption order has been made . . . may, on the application of the adopter, . . . amend the order by the correction of any error in the particulars contained therein." An adopter applied to the juvenile court under s. 21 to amend the adoption order by deleting the description "foundling" and substituting a different date of birth, as it appeared from certain evidence that

the child was younger than the age stated in the order. The court held that they had no jurisdiction, and the adopter applied for an order of mandamus.

LORD GODDARD, C.J., said that it had been suggested that s. 21 (1) was only a slip rule; but the section was in the widest possible terms, and obviously gave power to correct particulars, which in the case of children of unknown parentage could easily be wrongly inserted in an adoption order. The justices had been wrong in refusing jurisdiction.

CASSELS and DEVLIN, JJ., agreed. Order of mandamus.

APPEARANCES: *H. E. Francis* (*T. D. Jones & Co.*); *F. H. Lawton* (*Samuel Coleman*); *P. Wrightson* (*J. G. Barr*, Solicitor, L.C.C.).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 52

ROAD TRAFFIC: DISQUALIFICATION FROM DRIVING "5-HUNDREDWEIGHT VEHICLES": WHETHER A "CLASS OR DESCRIPTION"

Petherick *v.* Buckland

Lord Goddard, C.J., Cassels and Devlin, JJ.

14th December, 1954

Case stated by Essex justices.

The defendant, having committed offences under the Road Traffic Act, 1930, was disqualified for "holding or obtaining a licence for driving five-hundredweight vehicles for twelve months." On appeal by the prosecutor, the question for the opinion of the court was whether "five-hundredweight vehicles" was a "class or description" of vehicles within the meaning of s. 6 of the Act, which provided that a court might limit disqualification "to the driving of a motor vehicle of the same class or description as the vehicle in relation to which the offence was committed."

LORD GODDARD, C.J., said that the prosecutor contended that the disqualification was bad, as there was no such "class or description" of a vehicle in the Act as a "five-hundredweight vehicle." Section 2 provided: "Motor vehicles shall, for the purposes of this Act and the regulations, be divided into the following classes," and then set out the classes; heavy locomotives, motor cars, etc. In almost every other part of the Act the expression used was not "class," but "class or description," but there was nothing said as to what "description" meant, or who was to prescribe it, or how it was to be applied. To construe the words "class or description" as tautologous would, it appeared, invalidate a number of the regulations made under the Act. Somebody must be able to say whether a vehicle was of a particular description or not, and if the Minister could do it, there was no reason why the justices could not, and it could not be said in law that the disqualification was invalid. But it was inconvenient in form, and the court would direct that in future justices, when limiting a disqualification under s. 6, should limit it to vehicles which could be found under a particular class in the Act or under a particular description in the regulations.

CASSELS and DEVLIN, JJ., agreed. Appeal dismissed.

APPEARANCES: *F. H. Lawton* (*Sharpe, Pritchard & Co.*, for *D. E. Morgan*, Chelmsford); *Rodger Winn* (*Treasury Solicitor*); the defendant did not appear and was not represented.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 48

GAMING: LOTTERY RUN BY FOOTBALL SUPPORTERS' CLUB: WHETHER ILLEGAL

Pearse and Others *v.* Hart

Lord Goddard, C.J., Cassels and Devlin, JJ.

14th December, 1954

Case stated by Gloucester justices.

The defendants were charged with being concerned in a lottery which was unlawful by reason of the Betting and Lotteries Act, 1934; they were connected with the Gloucester City Association Football Club Supporters' Club. That club was established in 1936 to assist the main football club financially and otherwise, and for many years promoted dances, whist drives, etc., for that object. The membership of the supporters' club was some 500 in 1939, and 1,000 in 1948. In 1953 the club began a lottery, limited to members, who had to pay a special fee of one shilling to enter. In six months the club membership expanded from 1,400 to 12,500. Of the net proceeds, 75 per cent. was devoted to prizes and 25 per cent. to the purposes of the supporters' club. In April, 1954, some 14,700 tickets were being sold weekly, and the revenue gained thereby by the supporters' club was some three times the sum gained from other sources. The justices convicted. The defendants appealed.

LORD GODDARD, C.J., said that the question was whether, within the meaning of s. 24 (1) of the Act, the lottery was confined to "members of one society established and conducted for purposes not connected with gaming, wagering or lotteries." On the facts it was impossible to say that, though it was only members of one society who could take tickets, that society was not conducted for a purpose connected with lotteries. It was not a question whether the club had one purpose and one purpose only; if one of its purposes was connected with lotteries, those lotteries ceased to be private and came under the ban of the Act. The justices were amply justified in deciding to convict.

CASSELS, J., agreed.

DEVLIN, J., agreeing, said that the meaning and effect of s. 24 had to be considered in *Maynard* v. *Williams* (below) in which the court was reserving judgment; but even if the construction most favourable to the defendants was adopted, there was still ample evidence to justify the conclusion of the justices that one of the purposes for which the supporters' club was conducted was concerned with lotteries. Appeal dismissed.

APPEARANCES: *H. Heathcote-Williams*, Q.C., and *C. Priday* (*Devonshire & Co.*, for *Bretherton & Sons*, Gloucester); *Sir H. Hylton-Foster*, Q.C., *S.-G.*, *Rodger Winn* and *P. Wrightson* (*Director of Public Prosecutions*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 67

GAMING: LOTTERY RUN BY FOOTBALL SUPPORTERS' CLUB: WHETHER ILLEGAL

Maynard *v.* Williams and Others

Lord Goddard, C.J., Cassels and Devlin, JJ.

17th December, 1954

Case stated by Devon Quarter Sessions.

The respondents, members of the Torquay United Supporters' Club, were convicted of offences under the Betting and Lotteries Act, 1934, in connection with weekly lotteries run by the club. On appeal, quarter sessions found that the aims and objects of the supporters' club were the welfare of the Torquay United Football Club and to obtain funds for that purpose. The supporters' club's activities included numerous social activities all primarily aimed at raising money, providing voluntary services for the football club, improving the amenities of the football ground, organising and making arrangements for running the football club's "A" team, providing transport for away matches, maintaining and repairing playing kit and raising money by means of lotteries. For eleven weeks the supporters' club ran a weekly lottery, tickets for which could only be obtained by members of the supporters' club on payment of one shilling. About 5,000 tickets were sold each week. After deducting expenses, 60 per cent. of the receipts from the lottery were devoted to the provision of prizes and 40 per cent. used by the supporters' club for the benefit of the football club, the latter amounting to an average of £90 a week. Quarter sessions, allowing the respondents' appeal, held that the running of the lottery was only incidental and ancillary to the other methods and enterprises used by the supporters' club to carry out its declared purpose of helping the football club and that no offences were committed. The question for the court was whether the club "was established and conducted for purposes not connected with . . . lotteries" so that the lottery was a "private lottery" within the meaning of s. 24 (1), which exempted private lotteries from the provision in s. 21 of the Act that all lotteries were unlawful.

LORD GODDARD, C.J., said that the object of the promoters was to raise money by means of lotteries. That showed that the club was conducted for purposes connected with a lottery. There was no material difference between the present case and *Pearse* v. *Hart* (above), though in that case it was easier to find that the business was nothing but the business of running a lottery. One had to see what was the business of the supporters' club, and then see whether it was conducted in a way connected with lotteries. There were weekly lotteries, and if that was not conducting a business connected with lotteries, it was difficult to understand what would be so. The appeal should be allowed, and the convictions restored.

CASSELS, J., agreeing, said that on the facts the club was conducted for a purpose connected with lotteries. When Parliament used two words "established" and "conducted,"

it intended to convey two separate meanings. This society was established to help the football club financially; it was conducted for a purpose connected with lotteries, and it was not necessary that that should be the sole purpose of the club. Frequency and scale were matters of importance to take into account.

DEVLIN, J., dissenting, said that the question was not whether the society conducted lotteries, but whether its affairs were so conducted that the untainted purposes for which it had been established had either been overthrown or joined by a tainted purpose. On the true construction of s. 24 "conducted" was used to broaden "established"; the conduct of the society was material only if it effected a change in the purposes for which it was effected. In *Pearse* v. *Hart*, *supra*, there had been an enormous increase in membership when the lotteries were started; in the present case, though the holding of lotteries was a substantial part of the club's activities, it had not become so overwhelming as to become one of its purposes. Appeals allowed.

APPEARANCES: *Sir H. Hylton-Foster*, Q.C., S.-G., *Rodger Winn* and *J. T. Molony* (*Director of Public Prosecutions*); *Dingle Foot*, Q.C., and *T. O. Kellock* (*Arthur & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] [1 W.L.R. 54

AGRICULTURE: HUSBANDRY SUB-COMMITTEE NOT ENTITLED TO RECEIVE REPRESENTATIONS UNDER AGRICULTURE ACT, 1947

R. *v.* Agricultural Land Tribunal (South Western Province); *ex parte* Benney

R. *v.* Minister of Agriculture and Fisheries; *ex parte* Graham

Lord Goddard, C.J., Cassels and Devlin, JJ.

16th December, 1954

Application for an order of certiorari.

The Minister of Agriculture and Fisheries, acting through a county agricultural executive committee, informed a farmer, against whom a supervision order had already been made, that he had under consideration a proposal to make a dispossession order under s. 17 (1) of the Agriculture Act, 1947. The farmer gave notice that he wished to make representations and the persons appointed by the Minister to hear the representations were the county agricultural executive committee, who had delegated their functions to the husbandry sub-committee, by whom the farmer's representations were in fact heard. Following on the sub-committee's recommendations, the Minister gave the farmer notice that he proposed to make a dispossession order, and, the Lands Tribunal having dismissed the farmer's appeal, a dispossession order was made. The farmer applied for an order of certiorari to bring up and quash the decision of the Lands Tribunal dismissing his appeal and the dispossession order made by the Minister on the grounds, *inter alia*, that the husbandry sub-committee was not, having regard to s. 104 (5) of the Act, entitled to hear the representations, and that, accordingly, the hearing by them was a nullity and the Minister, in the absence of a valid hearing, was not entitled to proceed further with the proposal. The Agriculture Act, 1947, provides by s. 104 (4) that if a person "requires that an opportunity be afforded to him of being heard by a person appointed by the Minister for the purpose, such an opportunity shall be afforded to him . . . and the Minister shall not take the action in question until he has considered any representations made at the hearing." By s. 104 (5): "No officer or servant of a county agricultural executive committee, or any sub-committee or district committee thereof, shall be appointed under the last foregoing subsection to receive representations relating to land in the area of the committee."

LORD GODDARD, C.J., said that the plain meaning of s. 104 (5) was that officers and servants of the county agricultural executive committee were barred from hearing the representations, and so were sub-committees. What was intended by the subsection was that some person, whom the Minister had to appoint, should receive the representations so that the farmer could tell him his grievances and try to persuade him to tell the Minister that the order ought not to be made. Subsection (4) showed the reason, for it was the sub-committee which made the order and there would be no sense if the representations were made to the people who had already decided that the order should be made. In the present case the sub-committee did receive the farmer's representations and, therefore, the proceedings were bad *ab initio*. The order of certiorari must go.

CASSELS, J., agreed. He said that the sub-committee, the district committee, the county agricultural executive committee, their officers and servants were excluded from the receiving of representations from the farmer.

DEVLIN, J., agreed. He said that he also decided the case, and preferred to put it as his main ground, on the effect of s. 104 (4). The husbandry sub-committee were, by delegation, the *alter ego* of the Minister; the Minister could not appoint himself to hear the representations and could not, therefore, appoint his *alter ego*. He, his lordship, thought that the right construction of the section was that the Minister might not appoint for the purpose of hearing the representations someone who had already acted in the matter for some other purpose. Section 104 (5) was a real live section intended to confer something of value upon a farmer and was not just a bit of executive machinery. Order of certiorari.

APPEARANCES: *Kenneth Diplock*, Q.C., and *Gilbert Dare* (*Lucien Fior*, for *Thrall, Llewellyn & Spooner*, Truro); *Sir H. Hylton-Foster*, Q.C., S.-G., and *B. S. Wingate-Saul* (*Solicitor, Ministry of Agriculture and Fisheries*); *J. P. Widgery* (*Parker, Garrett & Co.*, for *Michelmores*, Exeter); *Kenneth Diplock*, Q.C., and *J. R. Cumming-Bruce* (*Gregory, Rowcliffe & Co.*, for *Clayhills, Lucas & Co.*, Darlington).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [2 W.L.R. 148

LEGAL AID: NIL CONTRIBUTION: WHETHER DAMAGES RECOVERED SUBJECT TO CHARGE FOR BENEFIT OF LEGAL AID FUND

R. *v.* Judge Fraser Harrison; *ex parte* The Law Society

Lord Goddard, C.J., Cassels and Sellers, JJ.

13th January, 1955

Application for an order of mandamus.

An action, brought by a legally assisted infant plaintiff, whose contribution was assessed at nil, was settled, the defendants agreeing to pay £500. No order was made for payment by the defendants of any costs. That sum, having been paid into court, was transferred to the county court to be applied for the benefit of the plaintiff. The Law Society applied to the county court under s. 3 (4) of the Legal Aid and Advice Act, 1949, for payment out from that sum of the costs paid from the legal aid fund on the plaintiff's account. The county court judge refused to make an order.

LORD GODDARD, C.J., referred to s. 3 (4) of the Legal Aid and Advice Act, 1949, and said that The Law Society quite rightly said that they wanted the costs which they had been put to on behalf of the infant plaintiff, out of the sum of money which had been paid into court; that they were bound to ask for it because the legal aid fund was public money and the Act of 1949 put a duty on them. As an example of the working of the section: A man gets a certificate to enable him to bring proceedings, and his contribution is assessed at £50. He proceeds with his action, and recovers judgment for £500 and costs. The Law Society could say: We have on your behalf paid out extra costs beyond that, there is a sum of £75, and, therefore, we shall want out of the damages the difference between the £50 and the £75 we have had to pay. In the present case, there was the difference that there was a nil contribution. The infant or his next friend was not ordered to make any contribution towards the costs, but he (his lordship) thought that it would be a very narrow construction to place upon s. 3 (4) to say that if there is a nil contribution then, although the person may recover heavy damages, no part of these damages was to be subject to the charge for costs. The section should, therefore, be construed as applying not only to the case where there was a difference between the amount of the contribution and the costs incurred, but also to the case where there was no contribution. Order of mandamus.

APPEARANCES: *Gerald Gardiner*, Q.C., and *J. S. Watson* (*Hempsons*, for *Herbert J. Davis, Berthen & Munro*, Liverpool).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] [2 W.L.R. 220

PROBATE, DIVORCE AND ADMIRALTY DIVISION

DIVORCE: DESERTION: CONDUCT TERMINATING DESERTION

Barnett *v.* Barnett

Sachs, J. 24th November, 1954

Defended petition for divorce, in which both parties alleged desertion from a date in August, 1950.

The parties were married in 1933 and there were three children. The wife gave birth to a child in 1946, who survived for a few

hours only and whose paternity was in dispute. The parties lived an unhappy "cat and dog" life for many years until on or about 13th August, 1950, when, after a scene during a visit of the wife's sister and brother-in-law, the husband left the home in the late evening with a few personal belongings. It was held that he left because he was "fed up"; that he said in effect before going that he had had "quite enough of it"; that he was leaving; that they were not to trouble him again, and that they would never see him again. Cohabitation was never resumed. On 26th August, 1950, the husband went to the matrimonial home to fetch some more of his clothes. When he got there he found that his wife had changed the locks on the doors so that he could not get in. He fetched a police sergeant and secured entry for the sole purpose of getting his clothes, which he took away. The court found that neither then, nor on any other date, did the husband make any approach to the wife with a view to returning to live in the matrimonial home, and rejected his contention that on 26th August, 1950, he was either minded or attempted to do so. The court further found that the wife by her attititude at the time made it clear to her husband that she did not want to see him again. On 29th August, 1950, her solicitors wrote to the husband asking him to enter into a separation agreement, and claiming maintenance. The husband called on the solicitors in answer and said that he would enter into the agreement and pay maintenance of £2 a week. The agreement was duly prepared, but never in fact executed; but the husband maintained payments at £2 a week.

SACHS, J., reading his judgment, said that it had been conceded that the husband had put himself in desertion when he left. But desertion was a continuing offence, and *prima facie* it seemed contrary to common sense for a wife to claim that she was being wronged by the continuing absence of a husband whom she had decisively declared she would not have back. His lordship referred to observations in *Pratt* v. *Pratt* [1939] A.C. 417, 420, and to *Cohen* v. *Cohen* [1940] A.C. 631, and said that for a wife to be in a position to assert in one and the same breath "I will not on any account have you back" and "You are deserting me" would constitute an artificial situation. That applied equally whether one looked at the position of the wife, who would be blowing hot and cold, or that of the husband, who would be found guilty of not doing something which his wife was proceeding deliberately to bar him from doing. The principles enunciated in and inherent in *Pratt* v. *Pratt*, *supra*, and *Cohen* v. *Cohen*, *supra*, created no such artificial situation, and there was authority for the proposition that if the possibility of the husband returning had been decisively negatived by the wife, then she so rejected her husband as to make her unable to call herself deserted by him. Each case must turn on its own facts, and in each case it was a question of degree as to whether the wife had to the above extent rejected her husband. On the facts of the present case the wife could not set up that the desertion by the husband continued over the period during which she had evinced to him a firm and decisive determination that he should not return to her. She had firmly rejected her husband, and it was from a practical angle out of the question that he should make any attempt to return home. On that point accordingly the prayer of the wife's answer failed. He (his lordship) was not concerned with the position which might arise when a deserted wife determined not to have her husband back, but did not make that fact clear to him. Prayer of answer rejected. Petition dismissed.

APPEARANCES: *Geoffrey Crispin* (*Pennington & Son*, for *Church, Bruce & Co.*, Gravesend); *K. Bruce Campbell* (*G. E. C. Dougherty*, Law Society Divorce Department).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [2 W.L.R. 229

HUSBAND AND WIFE: NULLITY: INCAPACITY: CURABILITY: WILFUL REFUSAL

S. *v.* S. (otherwise C.)

Karminski, J. 26th November, 1954

Defended petition for nullity of marriage on the grounds of incapacity and wilful refusal. The wife cross-charged adultery.

The consummation of a marriage was prevented by a curable defect in the wife, who remained a virgin. The husband suggested to the wife that she should see a doctor, but he did not take her to see one, and the wife did not consult one about the sexual difficulties which had restricted the husband's attempts at penetration until after a petition for nullity of marriage upon the grounds of incapacity and wilful refusal had been served upon her in April, 1953. In July, 1954, the evidence of the parties was heard in a defended suit, and the wife expressed herself as perfectly willing to undergo the necessary operation. The case was adjourned for assistance in argument by the Queen's Proctor and the wife underwent a hymenectomy before the further argument was heard. The result of that operation was to remove any impediment to consummation. The wife did not pursue cross-charges of incapacity in, and wilful refusal by, the husband, but prayed for divorce on the ground of adultery. *Cur. adv. vult.*

KARMINSKI, J., reading his judgment, said that the true test of incapacity was the practical impossibility of consummation, and referred to *G.* v. *G.* (1871), L.R. 2 P. & D. 287, 291. In the present case (his lordship continued) the wife was no longer incapable of consummation since the operation performed on her had rendered her physically capable of consummation. It had been submitted that if the wife were to be regarded as curable she must, in fact, be curable at the date of the presentation of the petition and that in the present case the wife had not been so curable, because she had refused to see a doctor or to undergo treatment prior to the presentation of the petition. That argument was not supported by authority. His lordship referred to the adjournment in *D.* v. *A.* (1845), 1 Rob. Ecc. 279, and to *W. Y.* v. *A. Y.* [1946] S.C. 27, in which a similar course had been taken after evidence had been given by a doctor that the respondent wife might have her condition remedied by treatment and on the respondent's own evidence that she was willing to undergo treatment. The question was this: Was the consummation of the marriage between the husband and the wife practically impossible at the date of the hearing of the suit in July, 1954? The answer to that question must be no. The wife had said that she was willing to undergo an operation, and she did, in fact, subsequently undergo it. Although consummation was now improbable, the impractical and the improbable must not be confused. The husband, accordingly, failed to establish his allegation in respect of incapacity. Referring to the issue of wilful refusal, his lordship said that the failure of the wife to see a doctor or to subject herself to treatment was more consistent with a state of indecision than with a settled or definite decision. Mere neglect to comply with a request was not necessarily the same as a refusal. A refusal implied a conscious act of volition; neglect might be no more than a failure or an omission to do that which had been suggested. In petitions based on wilful refusal a petitioner must prove that the marriage had not been consummated owing to the wilful refusal of the respondent. If the petitioner failed to prove that, he had failed to do what the section required, and the husband had failed to do so in the present case. The wife's charge of adultery was established and there would be a decree. Prayer of answer to nullity petition rejected; petition dismissed. Decree *nisi* of divorce on wife's cross-petition.

APPEARANCES: *J. E. S. Simon*, Q.C., and *Philip Cox* (*Dennes and Co.*, for *Harvey, Mabey and Walker*, Birmingham); *G. C. Tyndale*, Q.C., and *C. A. Beaumont* (*Shelton, Cobb & Co.*); *Colin Duncan* (*The Queen's Proctor*).

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [2 W.L.R. 246

DIVORCE: DESERTION: CONDUCT TERMINATING DESERTION

Fishburn *v.* Fishburn

Willmer, J. 13th December, 1954

Defended petition for divorce, both parties alleging desertion.

The wife withdrew from the marriage bed in January, 1947, because of her suspicions concerning her husband's association with another woman. Those suspicions were held to have been reasonable at the time, although as she never attempted to find out the true facts her alleged belief in his adultery did not necessarily remain reasonable up to the date of divorce proceedings begun in 1953. The husband, however, allowed relations to deteriorate, and on one occasion in 1948 he assaulted the wife; he never asked her to return to his bed or sought to convince her of his innocence. In June, 1949, he ceased to support her; in September, 1949, he threw her clothes from his bedroom and kept the door locked against her. Thereafter he made no attempt to approach his wife except to try to take his meals into her room. Shortly after the husband locked his door against the wife, the wife locked her door against the husband, and told him that if he would not have her she would not have him. The parties continued to live in the same house, but in circumstances held to amount to a *de facto* separation.

WILLMER, J., said that the husband's conduct had brought cohabitation to an end and he had made it abundantly clear to his wife that he never intended in any circumstances to have her back. The initial *de facto* separation was therefore due to an act of desertion on the part of the husband, for which at no time did he seek to make amends. But by her act in locking her door, and by her words, the wife had evinced to the husband a firm and decisive determination that he should not return to her. That conduct followed so swiftly after the husband's act of desertion as not to afford him any reasonable *locus pœnitentiæ*, and effectively prevented him thereafter from approaching her by the most suitable method reasonably open to him. Having evinced that determination in advance and put it out of the husband's power, had he been so minded, to return to her, she must be taken to have been in law in the same position as if a *bona fide* approach for reconciliation had been made to her and rejected. The initial desertion by the husband was therefore terminated by the conduct of the wife. His lordship referred in his judgment to *Barnett* v. *Barnett* (p. 79, *ante*), and said that it was quite impossible to distinguish the two cases. *Church* v. *Church* [1952] P. 313 was, however, distinguishable. In the first place there was no question in the present case of adultery on the part of the deserted spouse. Secondly, in *Church* v. *Church*, *supra*, the deserted husband's intention not to receive his wife back was not communicated to her until a considerable time after the wife's desertion—in fact, the three years' period had already nearly elapsed. Over the intervening period the deserting wife's unshakeable determination never to return had already been made apparent. In the present case, on the other hand, the wife's act in locking her door against the husband had followed so swiftly after his act of desertion as not to afford him any reasonable *locus pœnitentiæ*. Thirdly, the deserted husband's communication to his wife in *Church* v. *Church*, *supra*, did nothing to prevent the wife from making overtures, however belated, for a reconciliation; whereas here the act of the wife in locking her door, and keeping it locked against her husband, effectively prevented him thereafter from approaching her by the most suitable method reasonably open to him. Prayer of answer rejected. Petition dismissed.

APPEARANCES: *E. Crowther* (*H. E. Thomas & Co.*); *James Miskin* (*L. H. Whitlamsmith*, Law Society Divorce Department.)

[Reported by JOHN B. GARDNER, Esq., Barrister-at-Law] [2 W.L.R. 236

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Acquisition of Land (Division of Unexpended Balance) Regulations, 1955. (S.I. 1955 No. 80). 5d.

As to these regulations, see pp. 65, 68, *ante*.

Boot and Shoe Repairing Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1955. (S.I. 1955 No. 43.) 6d.

Coal Industry Nationalisation (Satisfaction of Compensation) (Amendment) Regulations, 1955. (S.I. 1955 No. 76.)

Coffin Furniture and Cerement-Making Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1955. (S.I. 1955 No. 53.) 5d.

Cotton Waste Reclamation Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1955. (S.I. 1955 No. 55.)

Dennyloanhead-Kincardine-Kirkcaldy-St. Andrews Trunk Road (Waukmill and other Diversions) Order, 1955. (S.I. 1955 No. 63.) 5d.

Edinburgh-Glasgow Trunk Road (Harthill By-Pass) Order, 1955. (S.I. 1955 No. 62.)

Export of Goods (Control) (Amendment No. 3) Order, 1955. (S.I. 1955 No. 50.) 11d.

Firearms (Scotland) Rules, 1955. (S.I. 1955 No. 75 (S. 2).) 6d.

Hairdressing Undertakings Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1955. (S.I. 1955 No. 68.) 6d.

Lands Tribunal (Amendment) Rules, 1955. (S.I. 1955 No. 54.) 6d.

As to these rules, see p. 49, *ante*.

London Traffic (Prescribed Routes) (Westminster) Regulations, 1955. (S.I. 1955 No. 57.)

London Traffic (Prohibition of Waiting) (West Street, Dorking) Regulations, 1955. (S.I. 1955 No. 78.)

Luddenden Foot Joint Sewerage (Amendment) Order, 1955. (S.I. 1955 No. 41.)

National Insurance (Increase of Benefit and Miscellaneous Provisions) Provisional Regulations, 1955. (S.I. 1955 No. 46.) 11d.

National Insurance (Increase of Benefit and Miscellaneous Provisions) (Transitional) Regulations, 1955. (S.I. 1955 No. 47.) 11d.

National Insurance (Industrial Injuries) (Increase of Benefit and Miscellaneous Provisions) Regulations, 1955. (S.I. 1955 No. 48.) 6d.

North Devon Water Board Order, 1955. (S.I. 1955 No. 67.) 5d.

Personal Injuries (Civilians) (Amendment) Scheme, 1955. (S.I. 1955 No. 49.) 5d.

Retail Drapery, Outfitting and Footwear Trades Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1955. (S.I. 1955 No. 52.) 6d.

Retail Food Trades Wages Council (England and Wales) Wages Regulation (Amendment) Order, 1955. (S.I. 1955 No. 44.) 8d.

Retail Furnishing and Allied Trades Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1955. (S.I. 1955 No. 56.) 5d.

Retention of Cables, Mains and Pipes under Highways (Lincolnshire–Parts of Lindsey) (No. 1) Order, 1955. (S.I. 1955 No. 61.)

Retention of Main under Highway (Pembrokeshire) (No. 2) Order, 1955. (S.I. 1955 No. 69.)

Southern Sea Fisheries District (Extension of District) Order, 1954. (S.I. 1955 No. 77.)

Stopping Up of Highways (London) (No. 1) Order, 1955. (S.I. 1955 No. 59.)

Stopping up of Highways (London) (No. 2) Order, 1955. (S.I. 1955 No. 60.)

Stopping up of Highways (Northamptonshire) (No. 1) Order, 1955. (S.I. 1955 No. 58.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 102–103 Fetter Lane, E.C.4. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Honours and Appointments

Mr. BERNARD I. CARTER, of the Magistrates' Clerk's Office in Bradford, has been appointed assistant clerk to the justices' clerk for Denbigh and Ruthvin Divisions, North Wales.

Mr. RICHARD NEVILLE DALTON HAMILTON, senior assistant solicitor to Buckinghamshire County Council, has been appointed Deputy Clerk of the Peace of Buckinghamshire with effect from 6th March.

Mr. JOHN ROUSE HOOLEY, at present with Carlisle City Council, has been appointed assistant solicitor to Salop County Council.

Mr. FREDERICK GEOFFREY LAWS, assistant solicitor to Blackpool Council, has been appointed third assistant solicitor at Bournemouth, with effect from 24th January.

Mr. GEORGE CHESTER OGDEN, deputy town clerk of Leicester since November, 1953, has been appointed town clerk.

Personal Notes

Mr. Harold Ayrey, O.B.E., town clerk of South Shields County Borough Council since 1932, is to retire in March. The Honorary Freedom of the Borough has been conferred on him.

Mr. Harold Gaye Michelmore, solicitor, of Newton Abbot, was elected hon. secretary for the sixty-fifth successive year at the annual meeting of the Lower Teign Fishing Association on 13th January.

Mr. Ernest Owen Reid, first full-time town clerk of Banbury, is to retire on 30th June. He has been town clerk since May, 1932.

On completion of sixty years as a solicitor, Mr. William Harry Creech, of Sturminster Newton and Blandford, has received a congratulatory telegram from the Dorset Law Society. He is at 83 the oldest practising solicitor in Dorset and still holds the post of coroner for North Dorset to which he was appointed in 1907.

Miscellaneous

DEVELOPMENT PLANS

EASTBOURNE DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County Borough of Eastbourne. The plan, as approved, will be deposited in the Town Hall for inspection by the public.

BERKSHIRE COUNTY COUNCIL DEVELOPMENT PLAN

BOTLEY TOWN MAP

Proposals for alterations or additions to the above development plan were on 20th January submitted to the Minister of Housing and Local Government. The proposals relate to land situate within the parishes of Cumnor, North Hinksey and Wytham in the Rural District of Abingdon. Certified copies of the proposals as submitted have been deposited for public inspection at the places mentioned below. The copies of the proposals so deposited, together with copies of the development plan, are available for inspection free of charge by all persons interested, at the places mentioned below between the hours indicated :—

Place of Deposit	*Hours for Inspection*
The Office of the Clerk of the County, Shire Hall, Reading	9.30 a.m.–5 p.m., Monday to Friday.
The County Planning Officer, 6-7 Abbot's Walk, Reading	9.30 a.m.–12 noon, Saturdays.
Abingdon Rural District Council Offices, 60 Bath Street, Abingdon	
Barclays Bank, Elms Parade, Botley, North Hinksey	10 a.m.-3 p.m. Monday to Friday. 9.30 a.m.–12 noon, Saturdays.

Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 31st March, and any such objection or representation should state the grounds on which it is made. Persons making any objection or representation may register their names and addresses with the Berkshire County Council and will then be entitled to receive notice of any amendment of the development plan made as a result of the proposals.

At the examination for honours of candidates for admission on the Roll of Solicitors of the Supreme Court, held in November, 1954, the examination committee recommended the following as being entitled to honorary distinction :—*First Class* (in order of merit) : (1) A. D. Clements, LL.B. (London) ; (2) T. G. Woodburn, B.A. (Cantab.). *Second Class* (in alphabetical order) : S. B. Ashurst, LL.B. (Manchester) ; J. P. Barker, LL.B. (Manchester) ; D. G. D. Blackburn ; A. C. Cadwallader, B.A. (London) ; M. F. Cain ; I. W. Chadwick, B.A. (Oxon.) ; H. T. Cocker, B.A. (Oxon.) ; J. A. Conkerton, B.A. (Oxon.) ; R. V. Cowles ; R. E. Crawley ; R. J. Eddis ; Z. Fantl, LL.B. (London), Dr. Juris, Prague ; F. Haas, LL.B., B.Sc. (London) ; R. L. E. Hallel, LL.B. (London) ; C. Harris, LL.B. (London) ; H. Kaufmann, LL.B. (London) ; H. R. W. Laxton, B.A. (Cantab.) ; M. C. Leary ; D. McCarraher, B.A. (Cantab.) ; M. Magee, LL.B. (London) ; P. J. P. W. Marsh, B.A., LL.B. (Cantab.) ; F. K. Mensa-Bonsu, B.A. (London) ; L. A. T. Moseley ; M. C. Oatham, LL.B. (London) ; S. E. Oswin ; H. G. Procter ; M. J. Rawlinson ; G. W. Rowlands, B.A. (Oxon.) ; T. Stallard, LL.B. (Bristol) ; D. M. Stevenson, LL.B. (Liverpool) ; J. A. Swalwell, LL.B. (Manchester) ; D. H. Tate, LL.B. (Durham) ; E. Taylor, LL.B. (Manchester) ; J. Towey, LL.B. (Sheffield) ; L. A. Witham, LL.B. (Manchester) ; A. E. Withey. *Third Class* (in alphabetical order) : P. J. Alderson ; J. Brocklebank, LL.B. (Manchester) ; G. X. Constantinidi, B.A. (Oxon.) ; D. J. Croot, LL.B. (London) ; A. J. Davidson, LL.B. (London) ; I. R. Francis ; E. C. Geddes ; R. M. Goode, LL.B. (London) ; C. C. Jenkins ; A. G. McKechnie ; R. G. W. Miles, LL.B. (London) ; M. Nash, B.A., LL.B. (Cantab.) ; A. J. Noon ; H. G. R. Pickthorn, B.A. (Cantab.) ; D. G. Rawlins ; D. C. Robson ; L. S. Sherriff ; G. A. G. Speechly, LL.B. (London) ; D. M. W. Wagland ; J. A. Watmough, LL.B. (Durham) ; B. Wood, B.A., LL.B. (Cantab.). The Council have given class certificates and awarded the following prizes : to Mr. Clements—The Clement's Inn Prize (value £40) ; to Mr. Woodburn—The Daniel Reardon Prize (value £20). The Council have given class certificates to the candidates in the second and third classes. Eighty-six candidates gave notice for examination.

Wills and Bequests

Mr. William Moll, solicitor's managing clerk, of Dewsbury, left £1,293 (£1,241 net).

Mr. C. E. A. Redhead, retired solicitor, of Aylesbury, left £39,661 (£38,100 net).

Mr. H. A. Phillips, solicitor, of Cardiff and Rhondda Valley, left £18,691.

OBITUARY

MR. W. D. R. LEWIS

Mr. William David Robert Lewis, solicitor, of Bargoed, died on 15th January, aged 78. He was admitted in 1901.

MR. J. W. NEEDHAM

Mr. John Windsor Needham, retired solicitor, of Manchester, died on 21st January. He was admitted in 1900.

MR. A. E. PALMER

Mr. Alfred Edward Palmer, managing clerk to Messrs. Madge, Lloyd & Gibson, solicitors, of Gloucester, died recently, aged 84. He had been connected with the local legal profession for nearly sixty-seven years, over half a century of which had been with the above firm.

SOCIETIES

THE UNION SOCIETY OF LONDON announce the following subjects for debate : Wednesday, 2nd February, " That the terms of the railway settlement are not in the national interest " ; Wednesday, 9th, " That the idea of comprehensive schools is misconceived " ; Monday, 14th, Joint debate with the Sylvan Debating Club : " That this House regrets the disappearance of domestic servants." The Union Society will be the guests of the Sylvan Debating Club at this meeting which will be held at 7 p.m. in the David Wynter Room, Swedenborg House, 20/21 Bloomsbury Way, W.C.2 ; Wednesday, 23rd, " That this House disapproves of British policy in Kenya " ; and Wednesday, 2nd March, Joint debate with the Eighty Club : " That the future of democracy depends on the Liberal Party." Meetings are held in the Common Room, Gray's Inn, at 8.0 p.m.

The UNITED LAW SOCIETY announce the following programme for February : Monday, 7th, Debate : " That the elevation of a lady barrister to the Bench would be very welcome " ; Monday, 14th, at 7.30 p.m., Moot Case : (Breach of promise of marriage, Catholic and Protestant, unconditional promise, subsequent refusal to marry unless respondent gave undertaking as to religious upbringing of children, undertaking refused but respondent otherwise willing to marry, claim and counter-claim) ; Monday, 21st, Debate : " That Test Match cricket should be abolished " ; and Monday, 28th, Debate : " That the parliamentary tradition of resignation by a Minister as a result of errors by his departmental civil servants should cease."

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